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SUZANNAH LESSARD ON NIXON'S JUSTICES

The Washington Monthly

FEBRUARY 1972/ONE DOLLAR

REVENUE SHARING WITH THE RICH AND THE CROOKED

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New Jersey: The People Close Their Eyes

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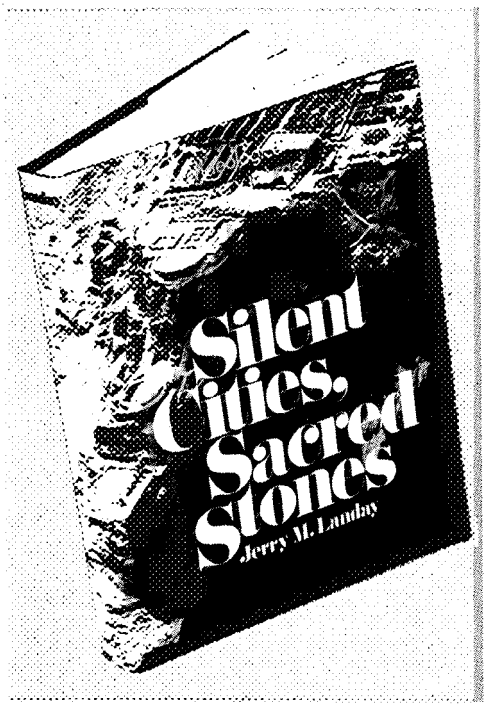

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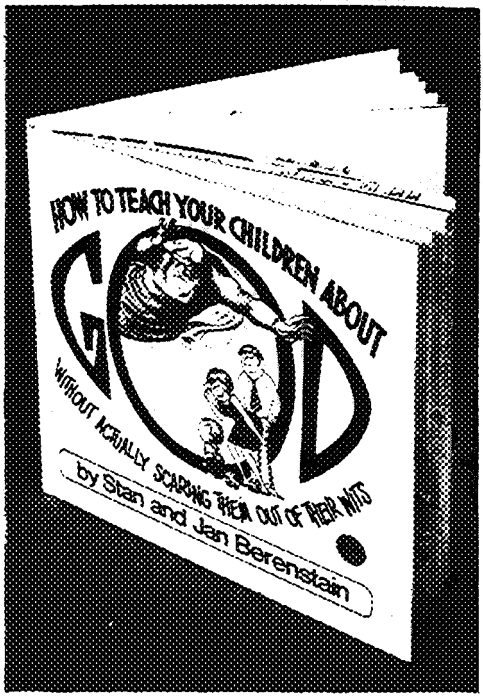

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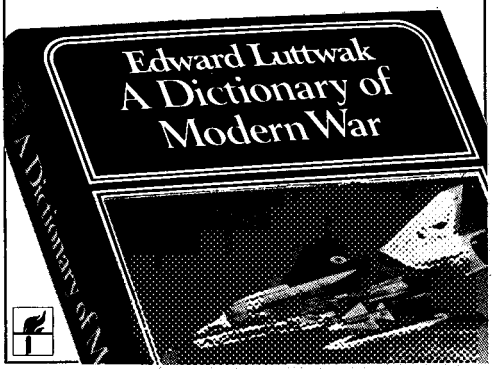

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VOLUME THREE NUMBER TWELVE
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REVENUE SHARING WITH
THE RICH AND THE CROOKED

Introduction
by John Rothchild — 8

West Virginia: The Governor Tooketh
by Mary Walton
In the words of an IRS agent, "I've seen all this before, but never all in one place." — 13

Maryland: The Governor Raiseth
by Thomas B. Edsall
Sargent Shriver didn't run for governor because Marvin Mandel had raised all the money. How the decline of the city machine helps a smart incumbent corner the funds. — 25

New Jersey: The People Close Their Eyes
by Michael Rappeport
There may be more corrupt politicians in New Jersey than voters who see what's going on. — 37

Working Up to Killing
by Oriana Fallaci
An Italian journalist tells how Viet Cong and American soldiers justify pulling the trigger. — 39

TIDBITS AND OUTRAGES — 47

Rehnquist, Powell, and the Cult of the Pro
by Suzannah Lessard
How the Senate and the press were at least half wrong. — 48

An Irresistible General, An Immovable Justice
by Theodore J. Lowi
The man who co-authored *The Pursuit of Justice* with Robert Kennedy reviews Victor Navasky's new book on RFK as Attorney General. — 57

POLITICAL BOOK NOTES — 63

LETTERS 4 **POLITICAL PUZZLE** 24 **MEMO OF THE MONTH** 36

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Letters

Camelot Revisited

As Miss Lessard so aptly observed ["A New Look at Kennedy," October], the irony of Kennedy was that the people elected him as a man of high morality and he then converted to pragmatism. This inspired anger and a feeling of betrayal in the public mind, although I am sure we could not have said it as clearly as Miss Lessard said it.

Again we see how perishable is an idea, a creative image, a new thought, or a moral observation. The differentness inspires public laughter, and pain for the individual. To avoid ridicule and pain, artists retreat into eccentricities; creative thinkers retreat into silence; and politicians retreat into expediencies and pragmatism.

FRANK ROBINSON
Atlanta, Georgia

I thought the Kennedy article was excellent.

As I think back over the last few years, I am increasingly aware of what a tragedy Kennedy's death was. If he had lived and won in 1964 he would, I believe, have provided increasingly capable leadership.

The combination of Nixon following LBJ is placing quite a strain on our society; I only hope we can survive it.

CHESTER BOWLES
Essex; Conn.

Chester Bowles, former ambassador to India, was Undersecretary of State in the Kennedy Administration.

Readers of Miss Lessard's article might be interested in a revealing detail of Kennedy tastes. In his early biography of JFK, J. M. Burns notes Kennedy's fondness for John Buchan—the dozens of adventure novels (among them *Greenmantle* and *The Thirty-Nine Steps*) and the autobiographical *Pilgrim's Way*, which Kennedy particularly admired.

Buchan, a Fifeshire minister's son, did brilliantly at Glasgow and Oxford, entered the Bar and eventually became Governor-General of Canada (and Lord Tweedsmuir). His novels reflect a brace of Conservative values: skepticism of human nature and grandiose systems; faith in practical reason and a cheerful *noblesse oblige* toward hardy, self-sufficient members of the lower classes (and races!); confidence that competition gives spine to nations and individuals; and belief that outdoor life (especially angling and mountaineering) has nearly infinite power to revive gentlemen jaded by complexities. Moderation and humor went with these views, in Buchan, and they were deeply English. But they were already less than useful to statesmen in his late 19th century England. For an American President in 1961, values like Buchan's contributed more to a cosmopolitan style than to penetrating views of national problems.

It is ironically moving that Buchan, at 25, joined the famous "Milner's Kindergarten," a circle of donnish young advisors around Lord Milner, Britain's High Commissioner in South Africa during the Boer War. That war, like Vietnam, showed regular troops the effectiveness of guerrilla warfare fired by nationalism, helped dissolve Victorian complacence, and lasted a lot longer than anyone anticipated.

JUDITH DOLLENMAYER
Syracuse, N. Y.

The Nation and Muumbi

As a footnote to Harold Isaacs' unique essay on retribalization and the nation-state ["The Houses of Muumbi," December], some reminiscences may be of interest.

In 1968, I attended a conference that brought together U. S. government officials and academics to discuss popular participation in development. The question of tribalism and national boundaries came up twice.

One was Nigeria. The man from Washington said it was "too bad" the U.S. had been unable to help hold Nigeria together. Neither he nor anyone else suggested that it was "too bad" the U. S. had not been able to

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help find the path to (or just look with benevolence on) an independent or autonomous Biafra.

The second was India. The consensus was that the solution to the problem of India's minorities (the Southerners had been rioting) lay in greater power for the central government. The idea that more, not less, power for India's minorities would lessen that nation's internal tensions did not get a hearing.

No one suggested that Nigerians and Indians might be better off (and the world more peaceful) if they were permitted to organize themselves along lines other than those of the British conquest.

My feeling was that these opinions did not originate from any cold calculations of U. S. national interest. The motivation seemed to spring from an instinctive commitment to the nation-state in whatever form it presently exists. No one present sought to question that commitment. We sounded like courtiers of Philip the Fair preparing the King's case against the feudal barons.

But national boundaries have no more than left-over colonial meaning in the Third World, and, as Isaacs points out, the nation-state is losing legitimacy even in the West. So it seems that policymakers and academicians might well rethink their assumptions about the sanctity of the nation in its present form.

Such a rethinking would help us all to grapple with the profound questions raised by Isaacs.

DAVID HAPGOOD
New York, N. Y.

David Hapgood is a contributing editor of The Washington Monthly

Smokey's Strip Miners

Mr. Risser's conclusion ["The U.S. Forest Service," December] is that the Forest Service is standing by while the National Forests are being razed for lumber production. A broad-brush attack like this cannot be answered in this limited space, except to ask that you and your readers visit some of the National Forests to see for yourself.

Three statements Mr. Risser made in his article demand answers particularly.

First, the Chief of the Forest Service did not "confess" that $900 million was needed to reforest, thin, and otherwise improve 18 million acres of National Forest land. He has been saying the Forest Service needed money for such work for years, most of the land involved having been acquired by the Forest Service in poor condition or already scourged by fires or other natural disasters. The acreage from which timber is harvested is planted or seeded promptly after logging, paid for by the sale of timber.

Secondly, the Forest Service did not support the original Timber Supply Bill. Because of the fear it would damage the Sustained Yield program (keeping lumber producing forests renewable forever) and because it did not assure the environmental safeguards, the Forest Service offered a new version with the safeguards in it. This version would authorize use of timber sale proceeds for reforestation and forbid overcutting.

Finally, Mr. Risser says the Forest Service did not contest testimony by a University of Montana geologist that clearcutting (cutting all the trees in a timber stand) could leave National Forests barren in less than 200 years. The Forest Service rebutted with a 29-page statement later in the Senate Hearings, opposing that contention based on research both inside and out of the Forest Service. This was conveniently ignored by Mr. Risser.

EDWARD P. CLIFF
Washington, D. C.

Edward Cliff is chief of the U. S. Forest Service.

The author, James Risser, replies:

I agree that readers should visit some of the national forests and see for themselves, but they had better do so quickly. Since my piece appeared, researchers at the Forest Service experiment station in Utah have completed a study which shows that national forests of the west contain nearly 25 per cent less usable timber than the Forest Service has been saying. This is especially significant because the Forest Service timber inventory estimates are used as the basis for determining the "annual allowable cut" of timber. Inflated estimates lead to logging at a rate which is greater than the forest's "sustained yield" capacity to regenerate itself.

To boast of the Forest Service's wilderness system is fine. But Chief Cliff doesn't mention that he has recently sided with the timber industry in effectively bottling up a pending presidential executive order which would protect present "de facto" wilderness areas from logging until a decision can be made whether to include them in the formal wilderness system.

On the three specific points raised by Mr. Cliff:

1) Mr. Cliff's disagreement with my word

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"confession" is a semantic one. The important thing is that Cliff admitted to the subcommittee that reforestation "is one of the areas of our programs that has been furthest behind and most poorly financed over the years." At the present rate of financing, it will take 38 years to catch up on reforestation, he said. Cliff also told the subcommittee that the Forest Service, in its timber programs, "may have stressed quantity at the expense of quality."

2) It is true that the timber industry first came out with a proposed timber supply bill which was so blatantly destructive that the Forest Service opposed it. But the industry's later version was heartily endorsed by the agency. The fact that the bill was still essentially a cut-and-get-out scheme is amply documented in the House debate prior to the killing of the measure.

3) Chief Cliff's third point is essentially correct. The appendix of the hearing record does contain a detailed statement by the Forest Service concluding that present timber-cutting practices are causing "no drastic or irreversible depletion" of the forest nutrients. At the hearings, Chief Cliff acknowledged the potential importance of the geologist's findings, but tended to downgrade them and said the Forest Service is researching the subject. He resisted a suggestion by subcommittee Chairman Senator Frank Church, that further studies be made by persons outside the Forest Service and the timber industry "in the interest of objectivity." Cliff said, "I don't agree that Forest Service scientists are not objective."

While almost everything you say is true, it occurs to me that your article might have been a little bit more informative had you noted who the real culprits are. Perhaps you are not aware that the average for the five preceding fiscal years ending last July of budgetary appropriations to the Forest Service show an extremely interesting trend. Of the budgetary requests submitted by the Forest Service, the Congress gave 95 per cent of that for Timber Sale Management, but only 40 per cent of that for reforestation and new planting. Thus, it is congressionally determined that timber sales be given somewhat over twice the effort given to forest renewal. The culprits in this case would appear to be the Congress itself, and more particularly the Subcommittee on Appropriations which deals with the Department of Agriculture.

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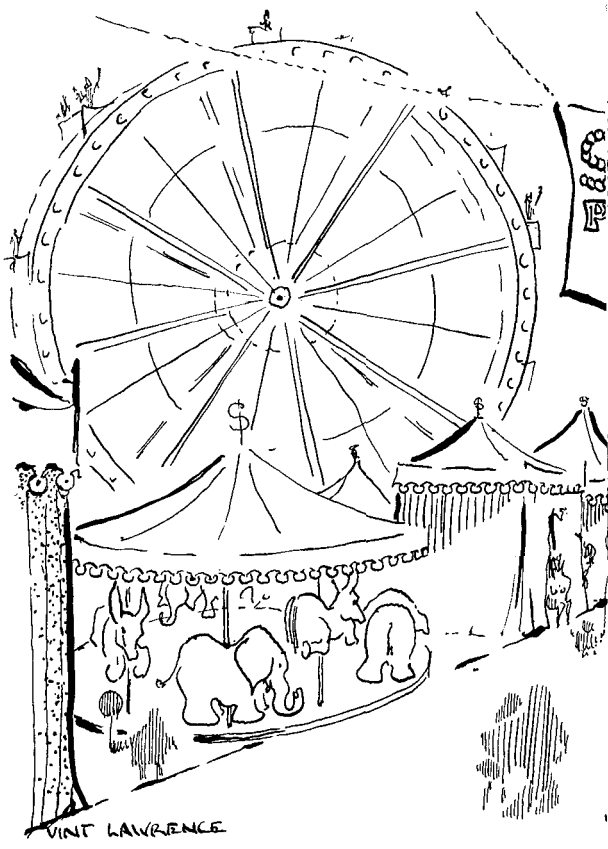
Revenue Sharing With the Rich and the Crooked

An Introduction by John Rothchild

Washington awaits the great migration. President Nixon promises a kickback to the states, and many of the legions of federally-funded consider packing the files and moving westward or southward in time to pick up a hint of the local accent and greet the incoming money from an office near the state capitol. There is still time, also, for a more important change in philosophy, to edit policy proposals away from the traditional "larger, overall perspective of Washington," to the "direct grass roots involvement with real problems."

In any case, there is now general agreement with the theory of revenue sharing—the qualms are qualms of detail. But those who expect to get in on the gold rush have not taken a close look lately at who their competitors will be on the local levels. Even the people who have more impersonal hopes for revenue sharing could not be aware of how widespread is the Addonizio Reflex—a trait found most commonly at the lower strata of



John Rothchild is an editor of **The Washington Monthly.**

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political evolution, involving an instinctive and over-developed digital grasp.

As a country, we have gone to the moon of politics, with elevated musings on public accountability and structural favoritism, while the rather simple and worn tradition of the under-the-table hand-off goes almost unchanged. The bribe and the fix are federal products, too, but there is a certain polish at the edges and top of government, where civil servants don't take personal risks either for or against conscience. But like Brazil, our interior is still a jungle—of extortion, fraud, bribery, and other hard-edged maneuvers—and the rules have not changed at all since George Washington Plunkitt, esteemed Socrates of Tammany Hall, gave his advice at the turn of the century to the young man about to enter the business of politics:

> The fact is that a reformer can't last in politics. He can make a show for a while, but he always comes down like a rocket. Politics is as much a regular business as the grocery or the dry-goods or the drug business. You've got to be trained up to it or you're sure to fail.

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State and local governments are still the undisputed turf of the men who make politics their business—a business which has come to be one of the few endeavors left where a man of high spirit and humble origins can parlay it all into a quick fortune. Mary Walton, a reporter for the *Charleston Gazette*, points up how this game works in West Virginia, a state where votes should not be controlled by the polling regulators, but by the Small Business Administration and the Price Control Board. West Virginia is particularly notable because, as one Internal Revenue inspector said, "I've seen it all before, but never in one place," and one doesn't have to look very hard to find bits of West Virginia in the state houses or city halls of almost any state in the nation.

For anyone who needs proof of this, Attorney General John Mitchell reminded a group of managing editors of the resiliency of the tradition in a speech on October 20, 1971, entitled "The War on Organized Crime and Corruption." In less than 32 months, Mitchell said, his department had

> obtained indictments or convictions of more than 170 state and local officials or former officials on federal charges or on state charges based on federal information. This figure includes only those offenses connected with organized crime, or those charges that appear to link the defendant with organized crime. . . they (the officials charged) range from positions of judgeships to state elective offices, from mayors to councilmen, from law enforcement officers to purchasing agents.

Some of the grass roots genius behind these indictments was never recorded by the editors, who tend to emphasize the importance of the defendant over the cunning of the exploit or the size of the take. Thus, John Dowdy can command public attention over a simple $25,000 airport hand-off because he happens to be a congressman, while far fewer people were aware of how New York Supreme Court Justice Joseph P. Pfingst was indicted for taking a trip

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to Europe to pull $50,000 out of a Swiss bank account under the code name "Egypt" to pay off Republican leader Frederick Fellman in return for the nomination to the court.

Notwithstanding the entertainment that a continuous monitoring of local extortionists, bribers, and defrauders might provide, the public has also been spared the rather tedious job of keeping up with the unending flow of Pfingsts at every level of state and local government.

At the state house level, we find former governor Otto Kerner of Illinois indicted for bribery, mail fraud, tax evasion, perjury, and conspiracy, and accused of taking some cut-rate race track stock in return for viewing state racing matters through the wrong end of the binoculars. The state's director of revenue and chairman of the racing board were indicted along with him.

Before Kerner took their minds off it, people in the same state were wondering why Secretary of State Paul Powell, who died in October, 1970, kept shoeboxes full of money in his closet. A few months later, a grand jury charged Seymour Emalfarb, an executive of two tire companies owned by Powell and some associates, with asking out-of-state trucking companies to express their gratitude for the cordial use of Illinois highways. Emalfarb, the indictment said, made sure that these out-of-state firms would have a reason not to take the highways for granted by threatening to arrest their drivers and halt the movement of their trucks through Illinois if they didn't make periodic gifts of money. The money was paid.

The instincts of such entrepreneurship seem unchanged as one moves among the various stages of political development. Up and down the ladder a politician has an equal chance, and may even outdo his counterparts at the higher levels. The advantages available to governors of Illinois are not lost, for instance, on legislators in Louisiana. There we see state Representative Christian Fraser hooking up with then-state Senator Ezekiel Gravolet and the auditor of the highway department, now charged with receiving "monies and bribes" for depositing state highway funds in a Gretna, Louisiana, bank; while another state legislator and four friends sold bonds for a Louisiana loan association in which they owned stock after putting out false official information on the association's financial health. In Florida, state legislator C. Carey Mathews and three Dallas men were indicted for applying similar techniques to a Miami insurance company and diverting its assets for their own use.

At the municipal level, there have been even more indictments. In Newark, ex-mayor Hugh Addonizio was jailed—and city councilmen, former city councilmen, the director of public works, and electrical contractor Tony Boy Boiardo were indicted—for raising revenue by extortion. In Jersey City, the mayor, former mayor, and 10 other public officials were nabbed on similar charges. Last year, the mayor and police chief of Jeanette, Pennsylvania, were accused of encouraging payoffs to protect gambling, while New Orleans District Attorney Jim Garrison was charged with taking bribes to protect the $15-million-a-year illegal pinball machine wagering business—where a free play can be cashed in like a poker chip. In Johnstown, Pennsylvania, a city councilman, a former city councilman, and the president of Teleprompter were taken to court on charges of bribery to secure the exclusive local cable TV franchise for Teleprompter.

While many such schemes, especially those that seem to generate spontaneously in New Jersey, are not dependent on subtlety, some of them are devious enough that the officeholder can keep several steps ahead of the law. When he was a lawyer on retainer for the state of Washington, a recent indictment charges, Joseph Alioto was to receive 15 per cent of the damages recovered from antitrust cases he won, with a ceiling of $1

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million. But after he was successful in a couple of big cases, he persuaded the state's attorney general and two other officials to remove the ceiling without advising the state. For this favor, Alioto agreed to split 50 per cent of the fee with the other men. By the time he was indicted, Alioto was mayor of San Francisco.

The above are just a few selected items from a federal list that fills press release books at the Justice Department and could keep courts busy merely protecting people from their own elected representatives. And Mitchell's figures are no reflection of the real magnitude of indictments, because they do not include charges brought only at the state level.

A generous projection of Mitchell's statistics is further suggested because the returns of what Plunkitt calls "honest graft" are still apparently worth the risks. The continuing limelight of indictments does not seem to stun local leaders into any moral pause. The successes of bribery, extortion, and fraud seem to be a much surer thing than the indictments themselves, which depend on the sporadic and happy coincidence of diligent reporters, willing informers, and the opposite political party being in control.

When the figures are projected under the table, the whole picture is disturbing to anybody who believes that revenue sharing will return American politics to a state of responsive innocence. It remains to be seen whether more federal money flowing across the state lines will bring increased legal controls, or just encourage more unemployed businessmen into Plunkitt's and Addonizio's line of work. At this stage, revenue sharing seems more of a temptation than a promise; as the money moves back down the ladder, it cannot hope to avoid all the meaty hands along the rungs.

These traditions have survived despite the efforts of reformers to take over what was left of the dying city machines in the 1960s, as Thomas Edsall points out in his article. But, if Maryland is anything like the rest of the country, the reformers and the bosses have left behind them a new kind of state politics in which money is even more important than it was before. Where candidates once had to at least buy votes from the bosses, and therefore retain some tenuous connection with the will of the electorate, the death of the machine has left a clear field for a new shopping-center brand of electropolitics, where instead of buying votes, the candidate merely buys TV time; instead of dealing with the city boss, he deals solely and directly with the political investor. Furthermore, this new arrangement does to graft what *Playboy* did to smut—by putting it all into the airbrushed and businesslike context where briběry becomes contribution, where fraud becomes miscalculation.

These newfangled maneuvers are hard to understand and hard to disclose, which makes them even more invisible to the voter. But the voter hasn't even seemed to catch on yet to the older kind of graft that Mary Walton describes. In New Jersey, that northern West Virginia, where being indicted is as much a part of a political resume as military service, Michael Rappeport describes a poll of state residents of which only 12 per cent believe that New Jersey government is "very corrupt."

This may be a matter of ignorance, or perhaps the voting public is in something of an agreement with the politician—who thinks of himself as harassed by nit-picking prosecutors and wonders why the barter of votes is any more illegal than the trade in razor blades or hamburgers. This is not to say, in any case, that all states and localities are corrupt—far from it. But the evidence that follows ought to be proof enough that nobody is paying much attention to this problem, and revenue sharing, without different people than are currently being elected, may turn out to be the most exciting fiscal adventure since the Comstock Lode.■

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West Virginia: The Governor Tooketh

My co-workers and I are possessed with boundless confidence that our goals will be reached and surpassed.
—Governor William Wallace Barron
Inaugural Address
January 16, 1961

by Mary Walton

In the days of American innocence, as Lincoln Steffens tells it in his autobiography, writing about corruption was a popular and easy job. One had no trouble telling the people of San Francisco how the mayor of St. Louis was always on the take, and the audiences in New York would never tire of reading about "The Shame of Pittsburgh."

But then Steffens, and others, began to conclude that the roots of crookery were not to be found in curious local quirks (always outside one's own particular region) or in the warped characters of a few politicians. He discovered the same things everywhere, and wrote that throwing the rascals out would inevitably mean bringing more rascals in.

This brought corruption too close to home to be readily perceived by anybody but Steffens, and the eager readers began to lose interest. Muckraking went into hibernation, and men like Steffens had to turn in their rakes. Only today are we beginning to see a resurgence of this kind of journalism—but at the federal level, where things are again distant enough to be entertaining. Hardly anybody has looked closely at the states since.

Not that things have changed much. If Steffens returned, he would feel right at home in almost any state, where the familiar landmarks of bribery, extortion, and fraud are apparent enough for any old investigator to feel comfortable. But he surely would have felt most at home in West Virginia during the recent Barron administration. There, he would have found a kind of muckraker's utopia, where palms were crossed and recrossed at every level, up and down the state, a laboratory of corruption that turned fixing and bribing into one of the state's biggest industries—touching everybody from governors down to county agents in the multiplier effect

Mary Walton is a reporter for The Charleston Gazette.

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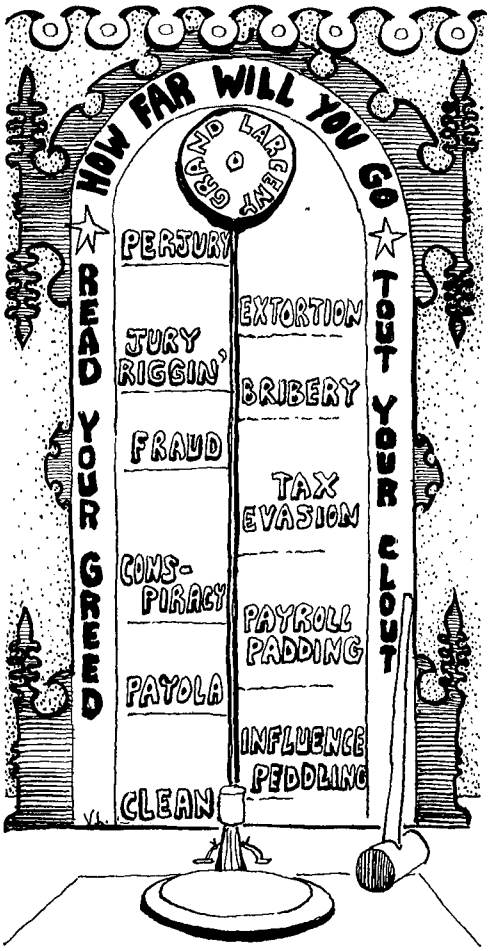

of the total haul. It is here that he would have seen the networks and systems that he tried to explain to the readers of 1900, instead of the occasional, free-lance rascal that we would all still like to believe in.

The Rogues at the Trough

State and federal grand juries in West Virginia have so far generated well over 100 indictments of state officials, their business contacts and hangers-on during the two Democratic administrations of the 1960s. Some have escaped indictment by turning state's evidence, some by dying. For others, the net is tightening as a new state investigatory agency and the U. S. Internal Revenue Service reach through the cobweb of greed.

Republican Governor Arch A. Moore, likely to seek reelection, can hardly conceal his glee at the Democratic scandals. He claims that the ill-gotten gains total $100 million. The lawyer for former Governor William Barron, turning on his client, recently called reports of $7 million in theft during the Barron term a "conservative estimate."

When William Wallace Barron, West Virginia's 26th governor, delivered his 1961 inaugural address, few West Virginians anticipated that he would soon be in a Texas prison serving a 12-year sentence for jury bribery. But there were some with foresight who half-believed one of his primary opponent's charges of an earlier attempted bribery, and distrusted the off-beat coterie forming around the candidate, himself less than the ideal statesman.

The *Charleston Gazette* editorialized: "This newspaper, after troubled consideration, has decided that it cannot give its endorsement to either candidate in the 1960 gubernatorial election." But, the editorial added, "Our weighing of the merits and faults of each candidate leads us to cast our vote for Barron—since the choice is limited to either Barron or Neely." Harold Neely was the Republican contender.

Harry Hoffmann, the *Gazette*'s editor, remembers remarking in the decisive editorial board meeting: "If Wally Barron's elected governor, and we drive down the boulevard one morning and the Capitol's not there, we'll know exactly where to look for it. But if 'Punchy' Neely's the governor and the Captiol's gone, we won't know where to look for it, and Punchy Neely won't have the slightest idea where it went."

The Capitol still stands, but much of its dignity is gone. And super-sensitive West Virginians, already smarting from the state's indelible image of destitution and poverty, are doubly bitter about the "Statehouse Gang" that "robbed the state blind." Others, more cynical, believe, "They weren't

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any different from anybody else. They just got caught."

Did they ever.

■ Barron's liquor commissioner is serving an 18-month term for income tax evasion.

■ Barron's chief executive aide spent five months in jail, also for income tax evasion. After his release, he was implicated in an interstate auto theft ring, but those charges were dropped.

■ His motor vehicles commissioner is on parole after serving 13 months of a one-to-10-year sentence for putting his own girlfriend's father and two personal pilots on the state payroll.

■ Barron's former law associate and long-time adviser is under indictment for jury bribery in the same case as Barron; so is the ex-governor's attorney.

■ Barron's state road commissioner and deputy state road commissioner are seeking new trials because the former governor fixed the jury that convicted them, but exonerated him, of federal charges of conspiracy to commit bribery.

■ His director of finance and administration, charged in the same bribery-conspiracy case, was dropped from the proceedings when his lawyer became ill. He is still awaiting trial.

■ In a separate case, Barron's welfare commissioner was charged with bribery. After two hung juries, the prosecuting attorney threw up his hands and declared that another trial would amount to "persecution rather than stern prosecution." The commissioner then went on to become a state senator. He was subsequently convicted of vote fraud.

And scores of minor officials and acquaintances have been charged with an awe-inspiring variety of schemes, as challenging to follow as a mountain road map.

Democratic Party officials can do little but stiffen their jaws for the next blow. When the state's former attorney general, elected on the Barron ticket, was indicted in August for participating in the bribery of the state's federal housing administrator, the state Democratic chairman aptly called it just a "little grain of sand on another pile of sand."

Even the Barron administration's one career success story, former Public Service Commissioner Virginia Mae Brown, who went on to become chairman of the Interstate Commerce Commission, was linked to the scandals through her husband. He was a member of a construction company charged with rigging the bidding on flood relief work for the state in 1962. Like many others, the charges were dropped when key evidence was ruled inadmissible.

Still the indictments flow, with no end in sight.

A Swaller and a Dollar

Although Wally Barron was personally charming, nothing in his mediocre career suggested he would be an effective governor. He was the son of a minister, grew up in Elkins, and attended West Virginia University Law School, the traditional prep school for state politicians. In 1941, after law school, Barron returned to Elkins and moved into law offices with Bonn Brown, a son of another well-respected family, who many credit with masterminding the convoluted scheme that would land them both in front of the same jury 27 years later. When Barron made his political debut as mayor of Elkins in 1948, Brown was his city attorney.

In West Virginia, the politician is a man who comes around every four years, promises to fix your road, and never does. Fatalistic voters expect little of their elected representatives. They are seldom disappointed. Barron is barely remembered as a two-term member of the House of Delegates from his native Randolph County. A lobbyist of that period describes him as "quiet, demure, fit—that's an appropriate word—competent. He didn't participate too avidly in any of the debates." No major legislation bears his name.

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In the early days of his career, Barron's drinking was a major liability. In the '40s it was not uncommon for Elkins residents to see their new mayor stumbling through the streets with several days' growth of beard, his clothes disheveled. Sobered in more ways than one by an operation for cancer of the colon in 1952, Barron stopped drinking, with rare lapses. Those lapses often occurred as the time for his yearly cancer checkup approached, when he drank to calm his unbearable fear.

In 1952, when Governor William C. Marland offered the unsteadily reformed alcoholic the job of alcoholic beverage commissioner, Barron accepted, despite the misgivings of a preacher's son. There were subsequent whisperings of payoffs and favoritism in the state-run liquor dispensaries. A measure of that was acceptable, but things got out of hand and Marland fired him. Barron, nonetheless, made a quick comeback in 1956 as the elected state attorney general, the year Marland's term ended.

Unlike Brown, who was an astute lawyer, Barron's forays into the legal arena were half-hearted and limited. As attorney general, he was known more for what he didn't do than for what he did. He avoided controversial opinions, made no enemies, and quietly built up the indispensable network of political connections and obligations upon which he would draw in 1960. It surprised no one that year when he became the first candidate to announce he was seeking the gubernatorial nomination. Billboards and bumpers early boosted "Wally," the nickname he'd chosen. There were too many other politically prominent "Bills."

A vapid campaign was livened by State Treasurer Orel J. Skeen, who produced a tape, recorded secretly in his home by a former FBI agent, on which a $65,000 bribe was discussed with Barron. Skeen said he was being bribed to stay out of the primary race; Barron contended the two were discussing campaign contributions and filed a $300,000 slander suit which was later settled out of court on undisclosed terms.

The intriguing episode didn't faze jaundiced voters of the Mountain State, where campaign charges of corruption are *de rigueur.* They gave Barron 187,501 votes; Skeen, only 39,906; and the third candidate, Hulett Smith, who succeeded Barron in 1964, 140,079.

Despite an effort by the Republican candidate to revive the Skeen tape, Barron sailed through the general campaign, touring the state with a broom to illustrate plans for sweeping away litter and restoring natural beauty. The chief of his promotions was Bonn Brown. The slogan: "Keep West Virginia Clean."

It is nonsensical, of course, to suggest that in a West Virginia election, vote-getting ability had much to do with winning. Barron had the party's backing. With it came the dollars and half pints of whiskey that encouraged voters to ask for assistance from poll-watchers in marking their ballots, and elections officials to look the other way at "irregularities." Elections in the Mountain State are won by "a swaller and a dollar." And Barron won by a comfortable 56,000-vote margin, 10,000 more than John F. Kennedy's statewide edge over Richard Nixon that year.

Traffic Paint Across the Palm

Initially, the new governor displayed a surprising ability to get what he wanted from the capricious state legislature. In a remarkable First 100 Days, Barron pushed through a penny increase in the sales tax, the first pay raise for teachers in six years, liberalization of unemployment and workmen's compensation benefits, and a state Human Rights Commission. More surprising yet, the legislature gave him a state income tax and revenue for his programs. During his term, unemployment dropped from 105,000 to 41,000. Drawing on President Kennedy's affection for the im-

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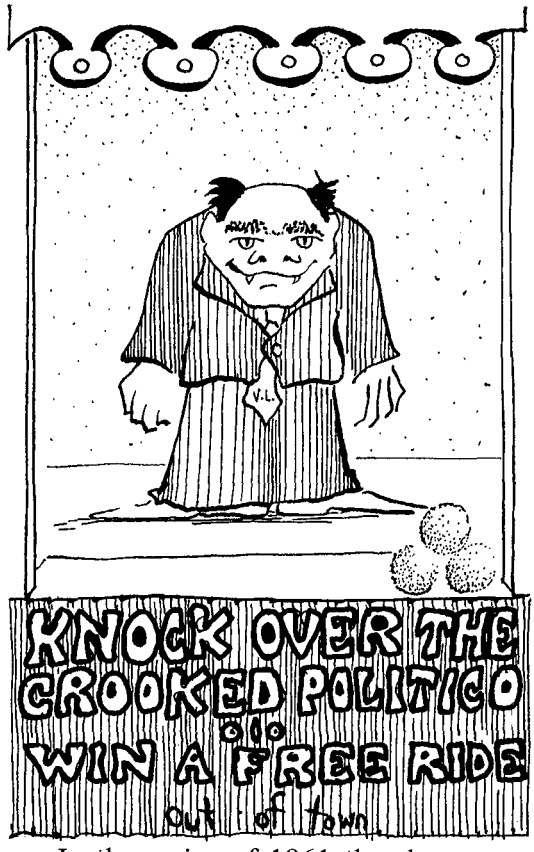
poverished state, and on the federal funding channels it opened, Barron expanded a small public works program to provide jobs for 14,000 men —the locally famous "dollar-an-hour" workers. He channeled them into his cleanup campaign, and the roadside parks they built now dot the state. During his administration, West Virginia became the first state to distribute food stamps.

1963 was West Virginia's centennial year and Barron threw himself enthusiastically into the statewide celebration. Had it not been for the discovery of more interesting events, he would probably be remembered as the more or less adequate governor who presided over those festivities.

But in 1961, only months after the inauguration, Bonn Brown and an Oldsmobile dealer from Clarksburg, W. Va., Al Schroath, had quietly established four dummy corporations, one in Ohio and three in Florida. The Ohio front was called Invest Right Corporation. The other three, in Boca Raton, Florida, bore equally brisk titles: Atlantic Management Corporation, Interstate Services Inc., and American Brokerage Company. In August of that year, they formed a fifth, the First Southeastern Capital Corporation, which later swallowed the others.

Barron simultaneously appointed the men needed to operate his future schemes: Burl A. Sawyers, state road commissioner, and Truman Gore, director of finance and administration; Sawyers, in turn, made Vincent Johnkoski his deputy state road commissioner.

No one questioned the merit of the appointees. The ruggedly handsome Sawyers had held the same office under Governor Marland, with Johnkoski as his executive assistant. Gore, the son of a Clarksburg physician, had impressive credentials: a bachelor's degree from the University of Pennsylvania, a master's from the Wharton School of Finance and Commerce, and additional graduate work at Cornell.



In the spring of 1961 the play was in motion, and West Virginia and out-of-state company representatives began to find it much easier to secure state highway contracts after a preliminary conversation with either Brown or Schroath. The contracting agency was required by law to secure three sealed bids; the lowest meeting specifications won. But, with the approval of the purchasing director, then an employee of Gore, the contracting agency could by-pass the bidding procedure with an emergency order. Or job specifications could be tailored so that only a single company was qualified to meet them. With less finesse, one firm might submit bids under its own and two illegally fabricated names, cornering the lowest bid. Barron's associates were willing to take care of such details for a consideration, generally five to 15 per cent of the gross sale price.

One illustration of how the scheme worked is the case of William A.

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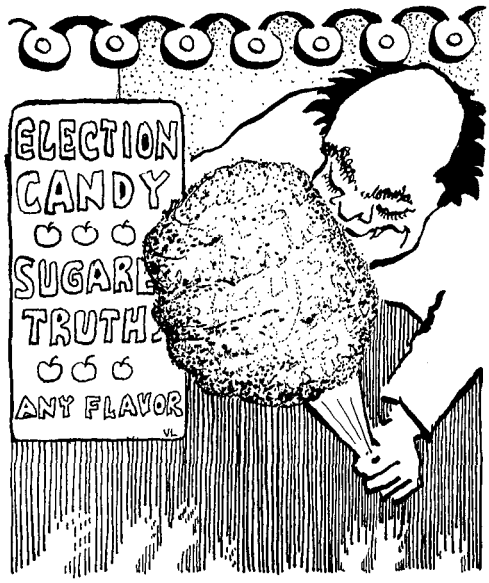

Smith, an Atlanta, Georgia, paint manufacturer. Smith had been generally unsuccessful for several years in getting state business. In 1961 he had had "consultation with a number of suppliers and the name of Bonn Brown was suggested to me to contact," as he was to tell a jury seven years later. Smith met Brown that April in the foyer of the Governor's office, and "we came to an understanding." In June, the first contract for traffic paint came through. And in November he signed an agreement to kick back 14 per cent of the price of the paint, or 45 cents a gallon, formalizing a verbal agreement which had already cost him $11,475. By July, 1963, Smith had contributed more than $29,000.

Traffic paint was a very big item with the road commission in those years. James J. Arcure, owner of Valley Distributing Co. in Fairmont, W. Va., added it to a sales line that previously had included produce and canned goods.

"What induced you. . . to get into the paint business?" the federal attorney asked him later.

"Well," Arcure answered, "I thought I could do some business with the state." That inspiration came to him after a meeting with Schroath, and it proved entirely correct. He did do business with the state, and also $24,370 worth with Interstate and American Brokerage in payoffs.

The under-the-table business came as a rude shock to John Ruckman, a Wheeling lawyer and chairman of the Ohio County Democratic Party. He thought Brown was simply doing him a favor in helping his client win a $100,000 order for 20 steam rollers. But then, Ruckman explained to the jury, "Some time later, and by later I think it was a month or two, we received . . . an invoice from Atlantic Management Inc., a corporation from Florida, for $9,000. . . . Well, we of course met and wondered who Atlantic was and thereupon Mr. Brown was contacted, and as I recall he stated that he was a representative of Atlantic Management Corp., and that this bill was due and should be paid." They paid.

Ruckman was not so stunned that he turned down a sales job for Minnesota Mining and Manufacturing Co., also arranged by Brown. The two of them split a $2,356 commission before he "realized this just wasn't my line of work."

Between frequent trips to Boca Raton, Barron payoff men were often in Charleston at meetings, or socializing where salesmen could find them easily. In January, 1963, a reporter discovered that the audacious Brown had acquired an office in the Capitol near the governor's suite. When the story broke, Barron immediately had his friend evicted. Newsmen sought out Gore, whose department was in charge of the building, only to find that he was in Europe—but not, an aide took care to point out, at state expense. (Later the predictable Swiss bank story would materialize, with Gore in the role of courier.)

"I Should Have Stayed in Elkins"

By 1963, Barron's romance with the legislature was on the wane. He lobbied desperately for a gubernatorial succession amendment to the state

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constitution, but the legislature refused to offer it to the voters. Governor Moore had better luck, and it was ratified in 1970. Barron had wanted very much to be governor again, and when that became impossible he yielded to ennui, losing interest in the affairs of state his last two years.

But Brown, in 1964, picked up the gauntlet, and the promise of a bottomless money bag, with the brazen campaign pledge, "There will be no dealing under the table while I am governor of West Virginia." Voters never had a chance to find out. Brown ran a poor second to Hulett Smith, who went on to win the general election.

That fall, with Barron still in office, the *Charleston Gazette* published a series called "Brown Means Business," which uncovered a substantial portion of the corporate iceberg. State house reporter Thomas F. Stafford spent nearly three years in research after a high state official slipped him the words "Invest Right." His investigation took him from the West Virginia secretary of state's office to its counterparts in Ohio and Florida, where he nailed down three of the dummy corporations.

"There is no evidence of wrongdoing," he wrote. "The corporate officers have founded companies which in some respects are respected additions to the communities where they were established." But, he wondered, ". . . why would a company with a state recapping contract pay money through a Florida corporation into the West Virginia state Democratic executive committee? [Brown's explanation of one $3,000 bribe.] And why would a corporation be created by West Virginians in Ohio to provide business consultant services to West Virginia companies?"

The principals were understandably reluctant to explain. Schroath, when questioned, couldn't remember the officers of Atlantic Management Corp., although he was vice president and treasurer. Brown had to be reminded that Invest Right records bore his name as president, and then he observed lamely, "Somebody else must have put it there." Prophetically, he concluded, "I would have been better off if I had stayed in Elkins."

In the three years that federal investigators spent unraveling the maze of intricate relationships on which Stafford had based his series, Barron's term came to an innocuous end. He went into a law partnership in Charleston with a young man named John Davies. Licking his electoral wounds, Brown retreated to a busy private practice in Elkins. Sawyers, Johnkoski, and Gore retained their same positions in the new Democratic administration.

But one by one, the scandals were finally laid bare. In February, 1966, Barron's motor vehicles commissioner, Jack Nuckols, was sentenced to one-to-10 years for payroll padding.

Those whom grand juries didn't indict for their illicit earnings, the IRS snared for failure to pay taxes on them. Shortly after the Nuckols case, charges of income tax evasion were filed against Curtis Trent, the former governor's administrative asssistant. As Barron's aide, Trent not only handled the numerous chores involved in dealing with the public: he also held the powerful, if unofficial, post of patronage chief.

Trent's operation was uncovered by Internal Revenue Service special agents in 1967. And a federal grand jury charged him with failing to report $57,000 in income accumulated from 1960 to 1963, thus dodging nearly $19,000 in taxes. Trent didn't contest the charges and wound up serving only five months in jail. In 1970, he was implicated in a nine-state auto theft ring, but the charges were dropped. When last heard from, he was a foreman for a highway contractor in southern West Virginia.

The Chewing Gum Trial

As Barron's own hour approached, his liquor commissioner was nabbed,

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also for income tax evasion. Clarence C. Elmore had been the general field supervisor in the Alcoholic Beverage Commission when Barron was head of the agency. He was on familiar ground when he took over the Governor's old job. A hint that Elmore was making the most of his position broke in 1961, when his merchandising director accused him of stealing $10,000 worth of liquor from state warehouses, and billing it to distributors, who wouldn't dare protest for fear of losing contracts with the state ABC monopoly. As usual, nothing ever came of it. Elmore remained in his post under Barron's successor, when he was again accused of taking $10,000, this time from a liquor salesman anxious to see his brands listed in state stores. In 1967, a federal grand jury accused Elmore of failing to report nearly $20,000 of income in 1962 and 1963.

In the trial, witnesses testified that the former official had demanded payoffs to sell certain brands. And the prosecutor attacked the time-honored practice, long considered the liquor commissioner's prerogative, of pressuring companies into employing his political friends as their "representatives." Only then could their wares be listed. The representative, who did nothing, received a percentage of the sales. (The most desirable accounts were the high-volume cheap wines.)

Until outlawed by new legislation, this practice was so acceptable that, at one time, two *Charleston Gazette* editors were liquor representatives on the side. After exhausting his appeals against an 18-month sentence, Elmore went to jail last July.

Barron and his partner, meanwhile, were maintaining a lucrative private law practice, drawing heavily on the former governor's considerable influence in the new administration. Last year their confidential secretary defected to the press with their file of cancelled checks for that period, documenting a voluminous clientele among companies heavily into state contracts.

Barron, only 55, had begun to sound very much like a gubernatorial candidate again. Bumper stickers eagerly announced "By Golly, It's Wally." Almost certainly he would have run, had it not been for what the Democrats called their "Valentine's Day Massacre." On February 13, 1968, the former governor, three top members of his administration, and two respected associates were indicted by a federal grand jury on 27 counts of conspiracy. The federal involvement hinged on their use of interstate commerce facilities—telephones and the mail—to set up and maintain dummy corporations for an unlawful activity, bribery.

From the beginning, legal proceedings were plagued by an epidemic of illness. Arguing for a change of venue from Kanawha County, where Charleston is located, Barron's young attorney, a consummate showman, keeled over like a tree. He won a week's delay, but the change wasn't granted.

Bonn Brown tried to avoid the trial, claiming hypertension, but the judge, after reviewing medical evidence, declared him sufficiently fit. Then Gore's attorney became seriously ill midway through the proceedings and the case was ruled a mistrial. Gore has yet to face a jury on the federal charges.

The 15-day conspiracy trial opened August 12, with a parade of witnesses who testified to the involvement of 17 companies with the sham corporations for payoffs totaling $166,590. But the most damning pieces of evidence federal attorneys produced were two documents scrupulously signed by all six defendants, in which they agreed to share equally in the proceeds of their corporate undertakings. They were dated March 12, 1962. Defense attorneys insisted that no pact so carefully consigned to paper could be dishonest. On the other hand, the signatories were well enough acquainted to distrust each other.

The keystone of the Barron conspiracy was First Southeastern Capital

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Corp., to which the assets of the other corporations were transferred as they were dissolved. In one maneuver, Brown, Schroath, and Gore, it developed, had borrowed $70,000 from Mellon National Bank in Pittsburgh, then used the bribe money from American, Atlantic, and Interstate to pay off the debt. With the loan, they bought stock in Boca Raton Capital Corp. and transferred it to First Southeastern, in which each of the defendants held 100 shares. Another enterprise was a real estate development, Georgetown Homes. The prosecution maintained Georgetown's mortgage was paid off in the same painless fashion by the three Florida dummy corporations.

The defense limited itself, for the most part, to vociferous objections on procedural grounds, designed to build the appeal record. The attorneys didn't deny the payoffs. Playing to West Virginians' naivete, they maintained the corporations were performing legitimate consultant services for private businesses. On occasion, they contended the process didn't cost the state anything extra, and sometimes saved the public money. Most of the companies, however—assured of contracts—inflated their prices to cover the amount of the bribe, at the taxpayer's expense.

After the prosecution's summation, the defense attorneys rose and declared, one by one, "The defense rests." It was an electric moment. Followers of the case were prepared for a lengthy presentation that would dramatically assert the defendants' innocence and provide a good show. But the defense attorneys had concluded, first of all, that the prosecution hadn't presented enough evidence to persuade a jury. They also were probably aware that federal attorneys, limited in their presentation to crime that was interstate in nature, had a fat dossier of evidence on intrastate crime that could have surfaced in rebuttal.

The jury retired for a stormy session that deteriorated into name-calling and tears. On the second day

of deliberations the foreman sent the judge a note:

"We have a juror that stated: 'The judge will get all over those that vote not guilty.' This juror cursed, made slanderous remarks along with another juror throwing chewing gum. These two jurors are sisters-in-law and want to go home. The vote is 10 guilty and two not guilty. It is a solid vote and no one will give."

Judge J. Robert Martin, Jr., a salty Virginian, called in the jury and instructed them to reconsider. Three hours later they returned a verdict. With Gore's case severed, all but Barron were found guilty.

Brown and Schroath were sentenced to four years in prison and fined $10,000; Johnkoski, two years and $10,000; Sawyers, two years and $5,000.

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The jury's verdict absolving the former governor was understandable. The prosecution had been able to link Barron to only one transaction, a $107,000 land deal with a $7,000 payoff to American Brokerage. His signature was attached to the deed because the governor's personal approval was required by law on any land acquisition costing more than $25 an acre. Barron's attorney had argued, apparently convincingly, that the signature was only a formality.

Bingo and the Sacrificial Lamb

In the aftermath of the trial, while the convicted men appealed their sentences, the Barrons moved to a plush condominium in Pompano Beach, Florida, even though, shortly after the indictment, Barron had told newsmen that they were "not going to leave West Virginia, nor do we ever intend to leave."

It caused barely a ripple in 1970 when Barron, in a tacit admission of guilt, sent the U. S. Treasury $15,000 as a settlement on a $33,000 claim for taxes on income the IRS said he received from "certain sham corporations (created) to receive money from persons seeking to do business with the State of West Virginia."

There were several immediate results of the conspiracy case, the most depressing of which, from a Democratic point of view, was the election in November, 1968, of a Republican governor, Arch A. Moore, Jr. Moore, a former U. S. Congressman, pledged to restore "honesty and integrity in the governmental affairs of West Virginia, the likes of which this state has not seen or enjoyed for many decades."

Earlier that fall, the Democratic legislature had attempted to set the party's house in order by establishing a watchdog agency to monitor state purchases. Although it was established too late to save the election, the Purchasing, Practices and Procedures Commission (PPPC) became a permanent fixture at the Capitol, tucked in a corner behind an unmarked door.

The only such state agency in the country, the PPPC began in early 1969 a full-scale probe into financial records, both past and current. The following January, there was more trauma for the Democrats, as the Kanawha County grand jury returned 107 indictments against 11 corporations and 32 individuals, including 13 state officials. But Republicans were mortified to find the Moore administration's new purchasing director among them. On the repeat list were Barron and Gore, along with some interesting newcomers—Barron's law partner, John E. Davis, as well as former Welfare Commissioner Bernard Smith.

The State Supreme Court, however, dealt the PPPC a sharp blow with a decision invalidating nearly all the indictments because of inadequacies in the state's bribery statute, since remedied with new legislation.

Smith did stand trial for bribery, but it ended with a hung jury. Depressed and weary, the Kanawha County prosecuting attorney refused to try again.

In September of last year, however, Smith, who'd been elected a state senator, and four others—"The Logan County Five"—were found guilty on federal charges of vote fraud. It was the first such conviction since 1913, when five state legislators were found guilty of selling their votes.

But Smith's conviction was anticlimactic. A few months earlier, Barron had stolen the show for a long time to come. On March 30, the 26th governor of West Virginia, strangely pale under a Florida tan, stood between his two tall attorneys before federal judge John A. Field, Jr.—a man whom he'd once defeated for the post of attorney general—and pleaded guilty in a barely audible voice to bribing Ralph Buckalew, the foreman of the jury which had set him free in 1968.

Buckalew appears to have approached Barron before the trial. After he landed on the jury and was

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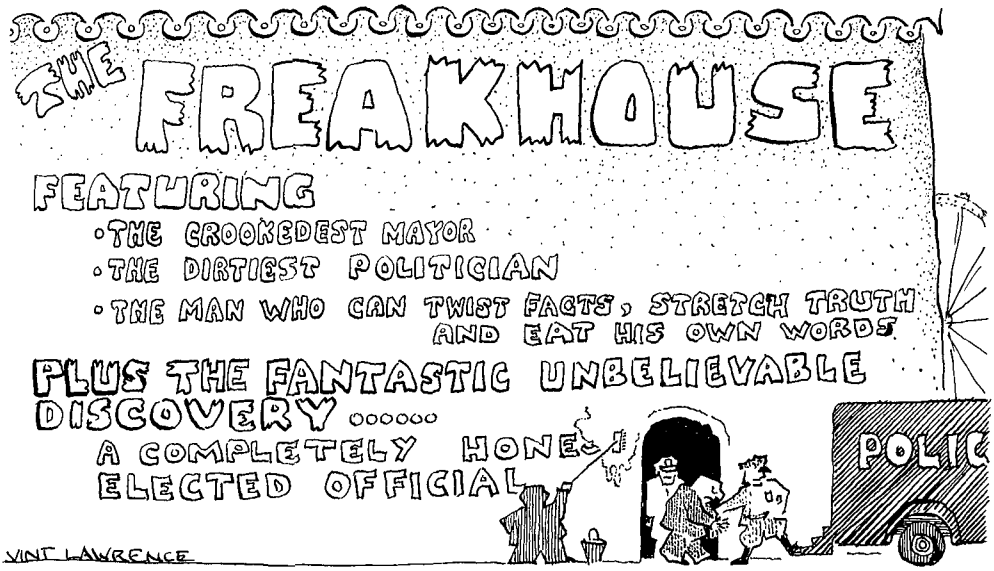

elected its foreman, Mrs. Buckalew put the cash proposition to Barron's wife, Opal, at a church bingo game. During the trial, Opal crammed $25,000 into a brown paper bag and delivered it to Buckalew's wife. Buckalew held out loyally during deliberations for Barron's acquittal.

Barron's attorney, Robert G. Perry, an accomplished criminal lawyer with a flair for theatrics, was accused of acting as the courier. The day after Barron pleaded guilty Perry held a press conference to deny the charge, terming himself a "sacrificial lamb." Further, in charges also denied and yet destined for trial, Bonn Brown was accused of supplying $10,000 of the bribe. Apparently Buckalew couldn't deliver two not-guilty verdicts.

The judge delayed final sentencing while Barron underwent a medical examination. His attorney had pleaded that his client was "not a well man." But when the results were in, Field came down hard. He said it was a crime "that strikes at the very heart of the administration of justice . . . . "

"I know that there were many things that would ameliorate the conduct of the governor," the judge continued. "I know that he was a desperate man. . . but this is not the time for this court to indulge in personal compassion."

Field sentenced Barron to 12 years in federal prison and a $50,000 fine. Buckalew, who had also entered a guilty plea, was given the same term.

It's apparent that Barron's stolen verdict in 1968 cost him far more than conviction would have. But as he pushes a broom through the corridors of the Federal Corrections Institute in Texarkana, waiting out the remaining three years before he's eligible for parole, Barron may be nagged by the thought that the theft was unnecessary. Ironically, Judge Martin, who'd directed the 1968 jury to weigh carefully the somewhat flimsy evidence against the former governor, later privately indicated to colleagues that he had strongly considered setting aside a guilty verdict against him.

Now that he is in jail, still receiving a $320-a-month pension from the state, Barron may have time to reflect on his mistakes and on the wisdom of Lincoln Steffens. The old muckraker and the new hoodwinker might have something to give each other—Steffens would find in the Barron years the confirmation of his wildest suspicions about the pervasiveness of corruption, and Barron could learn from the resulting dilemma. After all, as Steffens said, there are so many guilty hands under the table it is misleading to single out one pair, and Barron might survey the number of guilty companions and conclude that the roots of corruption did not come from his rascally nature but rather from the humble and normal desire to conform to his culture.■

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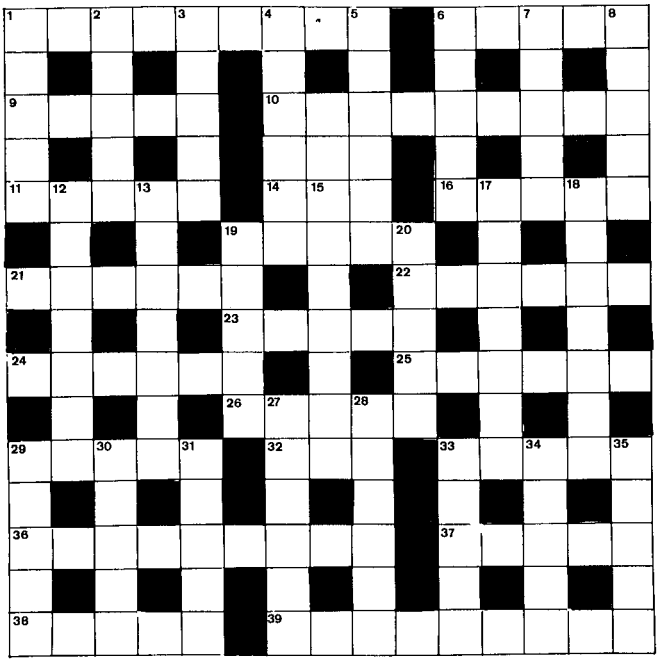
The Political Puzzle

by John Barclay



ACROSS

1. Veteran Congressmen say yes in riot. (9)
6. McGovern and Hatfield, for example. (5)
9. After ad, Hartke gets good start. (5)
10. Why I'll tie my hopes to pure segregation. (4-5)
11. Gets dirt off the studs. (5)
14. To get last of dawn back, fly Northwest. (3)
16. Place to be seen and see. (5)
19. Eats food on the divan. (5)
21. They got the short end of the stick. (6)
22. He must be in alert posture. (6)
23. At last brutally frank vote count. (5)
24. 75% of villagers is needed to protect home. (6)
25. Use a conger to improve iron? (6)
26. Uses crane to correct faulty conservation. (5)
29. Men of this era do adulate. (5)
32. In the middle of flesh the French are happy. (3)
33. North Vietnam sees Tet as opportunity to try U.S. (1, 4)
36. Men met and decided to change Constitution. (9)
37. I bail the boat, while others commit crime. (5)
38. He teaches us to rut the streets. (5)
39. He bends sack rather than accept. (5, 4)

DOWN

1. Dave's game won on end-around play. (5)
2. Pirates and Indians, for example. (5)
3. Starts the peons playing. (5)
4. Midwest eleven is sick in one group. (6)
5. Southerner telling Russian to stay out in sun? (6)
6. Four on the field but one on the tube. (5)
7. Of doom or experience. (5)
8. Allen or Barber. (5)
12. Escorted her into past employ. (7)
13. Tea ritual exists in name only. (7)
15. We include a call back in 1972 plans. (7)
17. Medicine source—it can be used by President. (7)
18. Cash and Mailer, for example. (7)
19. Trevino, not in, is upset but makes choice. (5)
20. You don't see his patch in just any ad. (5)
27. Normally excludes one's children, but not for golfer Lee. (6)
28. He shot an arrow into the air. (6)
29. He does not join in intra-party struggles. (5)
30. He hides nothing in the midst of poverty. (5)
31. The witch is a drone. (5)
33. He was as mad as two Presidents. (5)
34. I've at least as much as she had. (5)
35. Not less than thieves. (5)

The numbers indicate the number of letters and words, e.g., (2, 3) means a two-letter word followed by a three-letter word. Groups of letters, e.g., USA, are treated as one word. Answers to last month's puzzle are on page 26.

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Maryland: The Governor Raiseth

by Thomas B. Edsall

With the decline of organization control of large blocs of votes and a waning reform movement in the Democratic Party, a quiet transfer of power is taking place in Maryland politics, a transfer based on the use of money as an exclusive force in winning office.

The importance of money in 1972 is not particularly noteworthy in itself, since politicians, with rare exceptions, have always depended on cash to win elections. But the significance of recent developments lies in the techniques that those with money, or with access to it, have developed. Contrary to the expectations of those who were optimistic following the decline of the political machine, these techniques have given a small number of people even greater influence, without the restrictions that applied to the power held by bosses in the first half of the century.

An examination of this transfer requires some history of power centers in elections and an explanation of the failure of efforts in the 1960s to reform state politics, a failure based in part on the internal contradictions between the claimed aims of the reformers and their sources of financial support.

The sources of cash for the candidates have been, and continue to be, the various interests affected by the actions of state government. These interests can be broken down into three general categories: 1) the state-regulated industries, including liquor outlets and manufacturers, nursing homes, race tracks, and finance companies; 2) the contractors, developers, consultants, and real estate dealers who gear their activities to state projects; and 3) the large banks, law firms, and insurance companies that want to maintain their control over the methods used to sell bonds and to store monies.

Aside from lining up contributors, candidates had always been required to seek out the support of the local political machines, which also had to be paid off. In local elections the machines often tried to win seats, and in isolated cases a particular machine's candidate might run for statewide office. In most cases, however, the local machine merely bargained with various candidates over the price of votes, and the votes were paid for with money and jobs. The money, in turn, financed the printing of ballots and the "walking around" expenses of precinct and ward workers; the jobs kept the workers employed between elections. As the machine leaders developed their own interests, such as construction firms or real estate, the bargaining often expanded to include the promise of contracts for beneficial land deals.

Thomas B. Edsall is a political reporter for The Baltimore Sun.

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The Triangle Trade

The political boss was, then, the third point in the triangular relationship between the financial interests and the candidates. He was the vehicle to the vote, particularly in a predominantly Democratic state where a guarantee of a large turnout for a specific candidate in a primary election often assured final victory. The boss also became the intermediary between the money and the men who ended up winning the elections—the city councilmen, state delegates, and state senators whose votes were essential on zoning, bond, and budget questions.

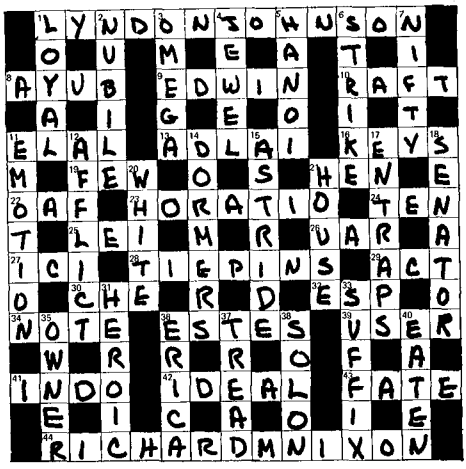
There are obvious criticisms to be made of this system, all justified. The boss was rarely interested in broad policy questions and could often control his constituency with the promise of jobs; special interests were provided the advantage of dealing with a private power over public questions; government bureaucracies were overloaded with incompetents appointed for their loyalty rather than their ability; the boss, through his business activities, often became a special interest himself.

The system, however, provided one major limitation on the ability of the boss to influence public decisions with impunity: he had to maintain the allegiance of those who would go to the polls every election and vote the way they had been told. In the cities, these voters were most often working class, and their concerns—the right to organize, minimum wages, and even the right to a fair deal at the race tracks—often conflicted with the monied interests. This forced the boss, who was caught between the two, to at least compromise. Another more subtle limitation was the background of the boss himself. Although rural political brokers often grew out of local elites, in urban areas the boss often rose directly from his own constituency. Men like Thomas J. D'Alesandro, Jr., Frank Kelly, and Jack Pollack of Baltimore began as city workers, prizefighters, or laborers.

Although the successful boss had always been inclined to join ranks with the bankers and contractors, he also enjoyed compelling privileged classes to seek out the favors of the urban minorities. But whatever his inclinations, it was necessary for the boss to force compromises or he would be treated as easy game.

The reasons for the decline of the machine are well known: civil service replaced patronage, television appealed directly to the voter, the ethnic vote began to dissolve as education improved and as people moved to the suburbs. The magnitude of this decline can be seen in the fact that in 1950 a powerful Democratic boss in Maryland, Jack Pollack, threw the gubernatorial election to the Republican candidate in retaliation for the ousting of one of his associates from the state central committee. Yet in 1971, the same boss was only able to deliver enough votes for his candidate for the presidency of the Baltimore City Council to run a weak fourth in the Democratic primary.

Answers to January puzzle:



Lining Up The Cast

This decline coincided with the focus in the 1960s on such issues as civil rights and poverty; it was a period when a vacuum of entrenched power permitted the development of a

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political climate appropriate for the election of what were considered reformers. In Maryland, this was typified by the election in 1964 of Joseph Tydings to the U. S. Senate. Tydings based his campaign on opposition to the special interests that dominated state government. Although his opponent in the Democratic primary was Louis Goldstein, he campaigned against the incumbent governor, J. Millard Tawes, and a beer lobbyist influential in the Tawes administration, George Hocker, treating Goldstein as a tool of the "Hocker-Tawes machine."

Tydings' failure to win reelection in 1970 can be attributed to a number of factors: his support of civil rights, the opposition of the gun lobby, his failure to build up a reform element within the rank and file of the Democratic Party. But equally important was the fact that Tydings permitted himself to be outflanked by the same interests he opposed in 1964. The maneuver forced him to run with the descendants of those he had defeated; it also exemplified the resurgence of money as the controlling factor in elections.

While the defeat of Tydings shows the negative effects of political money, the use of the same force to win is reflected in the 1970 election of Governor Mandel. The elevation of Mandel to the governor's office in 1969 had been the result of a political accident: the selection of Spiro T. Agnew as the Republican vice-presidential candidate. Mandel did not have to win a general election to become governor; instead, he needed only a majority of the 185 senators and delegates who depended on him, as House speaker, for passage of their legislation. Although his selection by the legislators was almost assured, Mandel had another debt to collect: as chairman of the Democratic Party during the 1968 election, he had been responsible for the distribution of money for the Humphrey campaign, most of which went to the organizations with which the legislators were affiliated.

Mandel's elevation to the governorship was unremarkable except in its long-term significance: the special interests that once had depended on Agnew, whose political future within the state was tenuous, now had a member of the majority party in office. The problem was to assure his actual election in 1970.

Without the advantage of incumbency, Mandel would have been an unlikely candidate. He avoided taking stands on public issues, specializing instead on the manipulation of votes and legislation; he was associated in the public mind with the secretiveness characteristic of the legislative process in the state capital. Mandel had never been a major vote-getter in his own legislative district, the fifth, a predominantly Jewish section of Baltimore. There he had been able to depend on his religious identification and the support of the two major political factions.

To prevent the development of significant opposition well before the 1970 Democratic primary, Mandel's associates began immediately to line up the support of the approximately 1,000 corporations and officials of corporations who can be depended upon to kick in $500 or more to state campaigns. Although Mandel might well have been the choice of the machines of earlier days, the power of giving initial approval to his candidacy would have rested with the bosses instead of the money brokers. In the past the contributors usually played an essentially passive role, permitting local bosses and organizations to select candidates, and then giving to whichever candidate appeared most likely to win, hedging their bets in close contests by backing two or more candidates for the same office. Until 1970, this process had still not been altered in recognition of the reduction of the organization-controlled vote.

Mandel and his associates recognized the elimination of the bloc vote and concentrated on the one variable they could control—money. They

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knew that the increased cost of campaigns made that variable even more important. In addition, they proved that stricter elections laws made it easier, rather than more difficult, to corner the market on contributions.

Cultivating the Constituency

The three men who systemized the use of money in the Maryland campaign represent the areas that are most essential to the process. Harry Rodgers, III is the president of Tidewater Insurance Company, a firm providing coverage to government employees and corporations that do business with the state or are concerned with state regulatory activities. W. Dale Hess is the former majority whip of the House of Delegates. As a legislator, he developed wide contacts with the state's lobbyists. He is a real estate speculator who profited from advance knowledge of pending decisions of the state roads commission. Since his retirement from the House, Hess has taken over public relations for Tidewater. Irvin Kovens is the former owner of the Charlestown, West Virginia, race track, which draws heavily on Maryland racing enthusiasts, and the operator of M. Kovens Company, a large installment sales company.

The three men approached every known "giver" and succeeded in raising adequate funds to conduct a primary before the election began. They developed what seems to be turning into a standard tactic, the pre-primary testimonial dinner held well before the election. Although important as a means of raising money, the testimonial dinner serves other essential functions. If successful, it creates a steamroller effect: potential backers who are reluctant to support anyone early in a campaign are forced to consider the possibility that further delay could turn them into latecomers. The dinner is held while the incumbent has at least six months, and preferably more, to go in his term so that all those firms with interest in the day-to-day decisions of current government—contractors with pending "extras," for example—will be more inclined to line up behind him.

Perhaps most important of all is the necessity of giving the incumbent, particularly an untested one such as Mandel, credibility within the financial community—to make it appear that his stock is rising and that now is the time to buy in before the price becomes prohibitive.

Rodgers, Hess, and Kovens have developed the ability to identify and cultivate the "constituency" from which money can be raised. The make-up of the constituency is always changing, depending upon a number of factors, the most important of which is the time period of the campaign. In the pre-primary period, there is a specific group which can be drawn on for support. It is composed of the corporations and men who are financially dependent on the discretionary powers of state officials: consulting engineers and architects who do not bid competitively for contracts, real estate dealers whose investments depend on road routes and interchanges, liquor people concerned with the diligence of inspectors, insurance companies seeking higher rate scales. The vulnerability of this group is one of the major advantages held by an incumbent running for reelection; he has a ready source available to try to create the steamroller effect at the appropriate moment.

A Speculative Investment

If the initial phase is successful, as it was in the case of Mandel's testimonial, when he raised over $600,000 nine months before the primary, the pressure is applied to swing the more secure potential contributors into line. This group is composed of the contractors who have dealt so long with state officials that they know the middle-level bureaucracy

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For book, film and theater nuts—You could have ordered tickets to "Sleuth" before the scalpers heard the news; you'd have known about "The Conformist" and "Investigation of a Citizen Above Suspicion" before the lines started forming—to say nothing of the Soviet version of "The Graduate", and other topics the U.S. press may *never* pick up . . .

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cannot turn against them; the banks and bonding companies so prestigious that no governor would attempt to offend them; the law firms with former partners secure on the civil and criminal benches. Assured of maintaining their income sources from the state, these groups are primarily interested in preventing any tampering with the overall system of state budgeting. They also like to avoid any major misuse of money, which becomes public knowledge, thus jeopardizing the state's bond rating, and consequently its ability to finance new construction. Much of the financial establishment tends to be very close-mouthed about any questionable activities in government, largely because it is in their interest to see that whatever problems arise are settled "in house" without any public controversy.

Clearly, in the two-stage process of winning first the vulnerable money and then the secure money, the first step is the more important. The natural guideline used by the secure group to determine a candidate's chances is the amount of money already collected.

The vulnerable money sources in Maryland have developed a unity of interest with a major element of the Democratic Party, a unity which is based on land speculation and the ancillary means of profit: insurance, marginally regulated lending companies, legal fees, and contracting. One of the characteristics of this speculative atmosphere is that those who operate within it encourage cooperation as much as, if not more than competition. The land buyer is concerned less with potential competitors for the land than with winning the cooperation of both public and private officials: zoning commissioners, road designers, money lenders, and potential developers. The degree to which this atmosphere has absorbed public officials is reflected in the Governor's former ownership of a real estate company and savings and loan firm, both of which were used for speculative investment; the participation of the attorney general and chief judge of the state district court system in a Florida land investment scheme; the inclusion of former Governor Agnew in a limited partnership investing in the Virgin Islands; and the present lieutenant governor's extensive landholdings in the suburban Washington area.

Seeking the Cash

The talent that Rodgers, Hess, and Kovens bring to this scene is an extension of past success in their own business ventures. Rodgers' cultivation of contacts through his political activities has turned Tidewater into one of the leading insurance companies in the state; Hess' real estate ventures have been so lucrative that they have been submerged in a myriad of corporations; Kovens recently sold his race track for a profit of $5.7 million.

If these men had been bosses, their activities would have damaged their credibility within their constituencies, particularly if the outward signs of their success were as visible as, for example, Kovens' chauffeur-driven Cadillac. But within their present political world—those who feel the need to protect their interests through contributions—business and the techniques used to achieve it are respected. The encouragement of cooperation within the ethic of speculation has served to increase its attractiveness to contributors and politicians alike; Kovens, for example, has a reputation as a man willing to cut others in on a deal.

The combined effort of Kovens, Hess, and Rodgers to raise money for Governor Mandel effectively put Mandel over the most critical phase of his 1970 campaign. Sargent Shriver, the former ambassador to France, who was considering making a challenge, discovered that the available sources of money had been dried up before he was able to announce his candidacy.

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The success of Governor Mandel's associates in lining up liberal donors in the old-line camp created a major overlap between Mandel money and Tydings money. There is in Maryland what might be described as a residue of liberal givers, centered in Baltimore and suburban Washington areas. They include men like Jerold Hoffberger, whose decision to back a candidate is significant not only in itself but also because it will prompt lesser liberal money to flow in the same direction. Hoffberger, as president of the company producing National Beer and Colt 45 and as the owner of the Baltimore Orioles baseball team, is not in a position to completely alienate influential state politicians, and once the Mandel campaign began moving, he joined the supporters.

This was a major blow to Shriver, but it also was a big factor in the decision of Senator Tydings to make an about-face from the style of his campaign of 1964. Faced with a primary fight, the opposition of the gun lobby, the suspicion of liberals over his sponsorship of preventive detention legislation and a possible split within his party, Tydings chose to line up on the side where he shared financial support—with Governor Mandel, the heir of the machine he ran against in 1964.

Tydings became the advocate of unity and cooperation within the Democratic Party, counseling Shriver behind closed doors not to run, telling his supporters not to help Shriver even indirectly, opposing a reform challenge which would force him into the conflict not only as a candidate seeking votes but also as a candidate seeking cash.

Mandel's supporters also used the state election law to advantage. The major regulation in Maryland is a blanket prohibition on contributions totaling more than $2,500 in any election by any corporation, individual, or union. This has proved to be to the advantage of Governor Mandel for several reasons. It does not apply to contributions made at fund-raising events held before the politician officially files his candidacy for election. This gives the incumbent running for reelection leverage to collect twice from those who think it is economically wise to contribute: once (or more) during the pre-announcement phase, and secondly after the formal campaign begins. If the law were tightened up to cover the period before the formal announcement, the incumbent would continue to have a major advantage in that he could bring more pressure to bear on donors to give the maximum well before the campaign begins, thereby eliminating them as potential sources of support for his opponent.

Governor Mandel's handling of the Humphrey money in the state in 1968 had been the subject of a federal grand jury investigation, and to avoid any possible complications in 1970, he went beyond the letter of the law and reported all purchasers of tickets to his pre-primary testimonial. At the same time, however, his aides encouraged reporters to believe that there was some doubt about the interpretation of the law. The doubt, in turn, was reflected in newspaper stories.

Despite whatever assurances they may have received, those who had already given to the Mandel testimonial were reluctant to contribute to anyone else, since there was some apprehension that the second donation might be illegal.

In the one-sided competition for financial support between Mandel and Shriver, another factor working in Mandel's favor was the fact that the ceiling on contributions has a built-in loophole: anyone who wants to exceed the ceiling can give additional money to his wife, child, or secretary, who in turn gives it to the candidate. It is an accepted practice, but Shriver was dependent to a much larger degree than Mandel on the type of contributor who is concerned with maintaining the appearance of propriety and who is, therefore, the most difficult to persuade to use these techniques.

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The Money Vacuum

The result of these maneuverings was Mandel's election to a four-year term in office. The election represented the resurgence within the Democratic Party of most of the financial interests which had been influential through the 1950s and early 1960s. The difference, however, is that these interests, through the guiding hands of Kovens, Hess, and Rodgers, are no longer dependent on the bosses and organizations as they were 10 years ago. Mandel's election is the first in the state in which the vacuum of power created by the decline of the boss has been recognized and filled by those who understand the consequent increase in the importance of money.

The absorption of the powers of the boss has had an extremely significant effect on the processes and style of state government. On the surface, the legislative and executive branches have been made more efficient. The committees have been better structured to process legislation; the governor has centralized control over the chaotic complex of agencies through the creation of cabinet-level posts to oversee the various functions of state government.

These changes are portrayed by the elected leaders and by the press as if they represent major alterations in the function and direction of state government. In fact, they represent only the imposition of corporate efficiency on institutions which are now more directly attuned to the needs of business. The vast majority of legislation continues to be unrelated to the needs and interests of the general population; instead, the measures are most often directed to the profit relationships of two related business endeavors: should the savings and loans be given a rate advantage over the commercial banks, should changes in the insurance legislation benefit the agents, the underwriters, or, best of all, both?

The elimination of the old-style boss control of politicians has given an air of propriety to what remains the same legislative process. The legislators now look less like ward heelers and more like department store managers. This shift in the superficial appearance of state leadership has insulated the politician from some criticism in the press. The business community, including the newspapers, has always viewed with distaste the necessity of dealing with the political hacks who filled city councils, legislatures, and the governor's office. These institutions have now been made more acceptable, and the lines of authority and responsibility have been defined in patterns following systems developed in private enterprise. The press is neither equipped nor inclined to raise the general question of the obligation of officials to their constituents. Incidental complaints are made, but the overall view of the press is favorable towards the changing face of state government.

Cementing Control

Governor Mandel has portrayed himself as an integral part of this change: a northwest Baltimore political functionary who learned the ropes and developed the skills to outgrow the machine. Two of the bills Governor Mandel fought hardest for in the state legislature last winter combined his interest in maintaining control of political money with his concern for increasing the appearance of efficiency.

The first bill provided for the state takeover of the cost of local school construction. There was no real opposition to the concept of the proposal; the fight developed over the Governor's insistence that he gain ultimate control over the entire process of letting contracts. On the surface, the Governor's position was that centralized control would permit better coordination of the program and the creation of uniform standards; at another level, the Governor was

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operating on a political fact of life, that corporations donate to the campaigns of the politician who has the final say over their business activities. Passage of the bill meant, in effect, that Mandel had shifted a major source of contributions—school architects and contractors—from the level of mayors and county executives to the gubernatorial level. He not only developed a new area to finance a 1974 campaign; he also reduced the resources of potential opponents now holding office in local governments.

The second measure had the identical intent: it gave the governor veto power over the leases to be arranged with the airlines using Friendship International Airport. The leases, in turn, are to finance approximately $500 million worth of capital improvements at the airport, another major source of contributions.

As Governor Mandel continues to expand his resources for reelection, the men behind him are in the process of acquiring an interest in an increasing number of politicians. In the recent elections in Baltimore city—the largest political entity next to the state—Kovens raised the funds for the successful campaign of the man who will probably be the city's last white mayor. Aware, however, of the growing political strength of the blacks, who now comprise just under 48 per cent of the city, Kovens has offered his money-raising talents to the black candidate defeated in the 1971 mayoral election, George L. Russell, Jr., who is considering a 1972 challenge of Parren J. Mitchell, the state's first black congressman. By refusing to work within the confines of the Democratic Party, Mitchell has become a threat to the ability of Mandel and Kovens to insure that their political dominance will continue to extend into the black community. The threat has been increased by the growing evidence of Mitchell's willingness in local elections to support candidates running against those put up by the established black clubs.

Unlike the Irish and Italians, blacks are at the point of winning majority political power at a time when they must depend on money to finance television campaigns; the same forces behind the decline of the machine are acting to prevent the formation of black organizations with any degree of independence from predominantly white sources of financial support. Kovens' backing of Russell is an attempt to capitalize on this weakness within the black community while internal competition still makes it most vulnerable.

Kovens was unsuccesful in his effort to control the election of the Baltimore city council president, but he has recouped the loss by volunteering to help raise the money to pay off the $33,000 debt incurred by the winner, Walter S. Orlinsky. Hess had already been active in Mr. Orlinsky's campaign.

This steady acquisition of politicians has created a forced unity among elected officials which supersedes conflicting ideologies and differing constituencies. The knowledge is shared, particularly among the ambitious, of the strength of controlled political money; delegates vote for or against abortion bills but join forces on insurance matters; city councilmen differ over free school lunches but back each other's zoning bills.

The continued control of elective politics by the small group of men who can manipulate existing sources of money is unlikely to be altered as long as state government remains in large part an appendage of the business community. More than any other level of government, the state has remained insulated from pressures to go beyond the role of arbiter of demands for wider markets and increased profits by various industries. State officials have encouraged the process of permitting local and federal governments to become focal points for social questions while issues at the state level remain isolated from the public.■

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Memo of the Month

The City of New York

DEPARTMENT OF AIR RESOURCES
51 Astor Place, New York, N. Y. 10003

ROBERT N. RICKLES, Ph.D., P.E., COMMISSIONER

MEMORANDUM

To: ALL STAFF MEMBERS

From: Dorothy Johnson

Re: Executive Order No. 7

In issuing Executive Order No. 7, a typographical transposition inadvertently titled Mr. Joseph Schechter as Deputy Assistant Commissioner. Please note, this should have read Assistant Deputy Commissioner.

/s/ Dorothy Johnson
Executive Assistant

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POLITICAL NUMBERS:

New Jersey: The People Close Their Eyes

by Michael Rappeport

New Jersey can pit its recent record of corruption against anybody's. The following is a sample of those indicted or convicted of crimes related to their political activities in the last two years alone:

- the minority leader of the state assembly
- a prominent assemblyman and former speaker of the state assembly (he got a standing ovation from the assembly when he resigned to start a jail term)
- the former secretary of state for eight years, who during that time was the state's second most powerful political figure after the governor
- a prominent state senator
- the prosecutor of the state's largest county
- a commissioner of the Port of New York Authority
- county-level officials in seven of the state's 11 urban counties in a state where county organizations are the prime forces in state politics.

The record of corruption is bipartisan. At least 20 cases, each involving different crimes, are included in just the partial list above. Through it all, the people of New Jersey go blissfully on, unaware of any corruption problem. An October, 1971, poll conducted by Eagleton Institute of Rutgers University and Opinion Research Corporation shows just how unaware the citizenry is. One series of questions asked respondents to indicate the level of corruption they thought existed at various levels of government. The results are shown in Table I. Despite the series of indictments and convictions handed down all through the summer of 1971, state government was thought to be at least as clean as, if not cleaner than, the federal government. Moreover, this result was uniform across the state and among the various demographic groups. The state's image also fared better than that of local government, where the citizens of most urban areas were far more likely to see their local bodies as corrupt—which is not surprising, considering the recent

Michael Rappeport is Director of Statistical Services at Opinion Research Corporation in Princeton, N. J. This article uses ORC research; the opinions are solely the author's.

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multiple convictions of the mayors of both the state's two largest cities (Newark and Jersey City)

The poll indicated, however, that one shouldn't be too surprised at this lack of agitation about state government corruption. Another series of questions was asked about self-expressed interest in various levels of government. Table II summarizes some of the results. State government runs a distant third across the board and also with the more educated part of the community. Other questions showed that aside from the governor's name, few respondents know anything about state politics. One example is that two weeks before the election of a completely new state legislature (both senate and assembly) only 18 per cent of the public could name *any* of the offices up for election.

While it is difficult to analyze the reasons for corruption in all states, in New Jersey, at least, two factors—inadequate media coverage and a dispersed population—seem to stand out. New Jersey residents live in the only state without a single TV station of its own—they are totally dependent on New York newspapers and TV stations. The state is also highly fragmented—Newark, the largest city, has less than six per cent of the total population.

In the final analysis, the quality of state government, like everything else, is very much a function of the leadership it attracts. However, in a fragmented state with inadequate media, even the best leaders have difficulty communicating with the people. It then becomes far harder to distinguish the good from the mediocre, and still harder for even the best to lead the people in the unpopular directions that conditions sometimes demand.■

TABLE I
In your opinion, how much corruption exists in New Jersey by level of government?

All Respondents	Very Corrupt	Somewhat Corrupt	Not Corrupt	No Answer
Local	15	38	33	14
State	12	49	20	19
National	13	48	23	16
College Educated Respondents				
Local	16	34	39	11
State	11	55	22	12
National	14	53	24	9

TABLE II
What is your interest in various levels of government in New Jersey?

All Respondents	Very Interested	Somewhat Interested	Not Interested	No Answer
Local	24	43	32	1
State	15	53	31	1
National	45	35	19	1
College Educated Respondents				
Local	29	44	26	1
State	17	58	24	1
National	58	30	11	1

All figures in percentages.

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Working Up to Killing

by Oriana Fallaci

Hue

Nothing is left. Only ruins, divided by a river. The bridge that led to the fortress has sunk at right angles, like a ship cut in two. In order to cross to the other side, the survivors have strung a foot-bridge, a ribbon of ropes and bamboo which they cross in Indian file. The ribbon sways because there is nothing to attach it to, the survivors inch forward with exasperating caution, each carrying something on his back: a mattress, a bicycle, a child. Fear of falling makes it useless to grumble, "Hurry up," and waiting your turn is agony. At last it comes, and clinging to the ropes I reach the north bank. What I see there makes me forget the beautiful temples that have been destroyed, the fine museums that have crumbled to dust.

Gravediggers are going by carrying plastic sheets full of human limbs, soldiers are dragging corpses tied in bunches, small wagons are loaded up in the most absurd positions: one corpse is sitting, one seems to be turning somersaults. This isn't a dead city, it's a morgue. Suddenly a girl comes along carrying a shovel and a sack. About 20, small, and pretty. Under her cone-shaped hat her long hair is plaited into a pigtail. She goes straight up to a kind of mound, puts down the sack, and calmly starts digging. She digs for 10 minutes; what she is searching for is almost on the surface. It's a man. When she finds him, she puts down her shovel and kneels to look at him. She recognizes him, but her expression doesn't change. With calm fingers she wipes the earth off his face. With calm hands she takes him under the arms and, panting, sweating, she pulls him out. Then she picks up the sack and tries to put the body inside it. It is an almost impossible task for such a small woman, and it looks as if the body doesn't want to go in, that it's refusing as if it were still alive. But by forcing herself on, sweating profusely, she manages it. Then she takes something off her pigtail, ties the sack, picks up the shovel, and carries the sack off, the stench enfolding her. I lean against a sheet of metal and vomit, on and on, until a voice comes to help me.

"Are you all right, madame? Can I do anything for you, madame?"

It is a French priest. He has a pale, kind face and wears a ragged cassock.

"I advise you not to go too far, madame."

"Why?"

"Without an escort, in that uniform. The Vietcong snipers don't like

Adapted from Oriana Fallaci's Nothing and So Be It, *©1972 Doubleday & Co., Inc. and Michael Joseph, Ltd., to be published in February by Doubleday.*

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American uniforms. Have you no other clothes with you?"

"A sweater, but it's green."

"That's better than a grey-green shirt. Put it on."

Obediently I put it on.

"There, now, you look a little less like a soldier. All the same I'd sooner come with you, madame."

Why not? The French are the best informed in Vietnam. So off we go, the priest and I, in the unchanging nightmare of rubble, twisted iron, holes, and corpses that after a while no longer move you. They are all alike, a hundred or a thousand makes no difference. The priest flings out his arms: five thousand, eight thousand, who can say? And for this we can thank both the Americans and the Vietcong. In fact it would be hard to establish if the Americans killed more with their artillery and machine guns and napalm or the Vietcong with their mass executions.

In the last few days the Vietcong lost their heads and did nothing but make reprisals, kill, punish. They had lists of suspects, and beside each name there was a cross that meant an accusation; if there were two crosses the man was killed. Sometimes the suspect might be not one person but a whole family: in this case the Vietcong marked the house with red paint and wiped out the whole family during the night. The executions took place at night, as a rule, and were always done by large groups. The North Vietnamese hadn't the time or the wish to oppose the Vietcong guerrillas. Look at Bo Dau district: in a ditch, 95 killed because they were thought guilty of having collaborated with the Americans. Look at the An Cuu district: near the wall of a barracks, 48 shot in the back of the head because they refused to fire on the American helicopters. We seem to be looking at Mathausen, Dachau, the Ardeatine graves: the world hasn't changed, and neither have men. Whatever the color of their skin or of their flag.

In fact, the priest says, now it's the government that gives us these massacres. After the "Liberation," at least 200 who were suspected of being Vietcong or of having collaborated with the Vietcong were killed by the South Vietnamese. Without even a summary trial, without any exact accusation. Some machine gun bursts and that was that. The massacre began as soon as the Marines had taken the Imperial Palace, and it's only the corpses of those 200 that have been recovered. Altogether, there have been 1,100 killed. Mostly students, university teachers, priests. Intellectuals and religious people at Hue have never hidden their sympathy for the NLF.

The Dead Are Their Toys

We have reached a round flowerbed, around which 20 corpses in pajamas are laid, pointing outwards, like the sun's rays. Victims of the Vietcong? Of the Americans? Or the South Vietnamese? The only thing that's certain is that they were caught in their sleep, and that no doctor, no nurse, no electronic brain took the smallest notice of them. They are literally covered with dried blood. A gravedigger with a mask over his face wraps them in plastic sheets one by one, then ties them at the ankles, the stomach and the neck, turning them into parcels.

Another gravedigger is digging a grave in the middle of the flowerbed and everything goes ahead at an extraordinary speed: the grave is soon ready and the parcels are packed. Then the first gravedigger calls the second gravedigger; together they lift one package after another, swing it slightly to the right, then to the left, and then, whoosh! they hurl it into the grave. Several children of about five or six are watching, standing on the mound of earth, their little hands at their noses to keep out the stink, laughing with glee. As each package swings they shriek in chorus: "One, two, whoosh! One, two, whoosh!" And after each dull thud they let go

Magnum photo by Philip Jones-Griffiths

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of their noses and cheer delightedly.

My eyes seek those of the priest. His pale face looks sad and indulgent.

"Madame, it's their only fun. The dead are their toys."

Their toys and the goods I sell. I want to photograph the scene. Would f8 and a 125th be best in this light? Or had I better use an f5.6 and a 60th? With Tri X film I can use 125th, I think. I wish I could adopt one of these children. I wish I could do something to stop me from feeling so ashamed.

The green sweater didn't work, from a distance it looked the same color as the uniform. So the Vietcong waited until I was within range and fired twice. One shot went past my head, quite close, and another nearly touched my sleeve. I flung myself down. Then the shooting broke out. There were a great many Marines and only one Vietcong. He is now lying face downwards and a long trickle of blood is coming from his nose. His bare feet poke out from his black trousers. A light wind moves his silky hair. Farewell, my brother. One of the two of us had to lie dead this evening, either you or I. It has been your turn, and it's as unfair as if it had been my turn, brother. But why was it your turn? One of your North Vietnamese comrades asked in a diary that I read what mysterious rules govern life and a man's survival: "If my head had been four centimeters further in that direction, I should be dead: is it possible for everything to happen by chance?" I wonder, too, as I wonder about many other things. This Marine, for instance, who saved my life by taking yours: who is he, where does he come from, why is he here this evening, why is he here of all places, where our destinies crossed? If he hadn't been there I'd be dead instead of you. Should I be grateful to him? Yes, of course. But then I have to thank him for having killed you. Should I? Killing is his job, he's only been doing his job. But what makes a man choose the job of being a soldier, a killer?

Saboteur Van Sam

Miss Fallaci interviewed a Vietcong saboteur awaiting death in a Saigon prison.

In silence I stayed there waiting for *le terrible* Nguyen Van Sam. And then Nguyen Van Sam came in, and he was this little barefoot man, dressed in black, with a bandage over his eyes, and frail shoulders, thin hands. They took off his blindfold, and under it was this scared, emaciated face and sad, shining eyes. And then my eyes met his, and he smiled at me. And he went on smiling at me even after he was sitting next to the interpreter, not knowing who I was. And I liked him at once, although he'd killed 58 people in 29 attempts, although I've never understood sabotages, not even when we used them on the Nazis. And I returned his smile, and my throat was dry, and it stayed dry even after I noticed that he smiled at me, because he was smiling at everyone, at everything, at the special policemen, at the fly that landed on his foot, at the death that awaited him, at the hope of talking with someone before dying. Of talking, talking, talking.

We stayed there together from 11 at night until two in the morning.

"Sam, how did you stop being a peasant and join the Vietcong?"

"It was because I didn't like going to school, I enjoyed rolling about in the mud with the buffalos too much, and when I was 16 my uncle said, 'You have to go to school.' And he sent me to a school of the Vietminh, who were the Vietcong in those days, and were fighting the French. He said, 'They'll make you study, you'll see.' My uncle was the paymaster of a Vietminh unit. The school was in the Plain of Rushes. There were 30 boys and 10 girls. On Saturday afternoons there was military training, to prepare the boys to fight against the French. We used to march—about turn, left, right—and practice fighting with wooden guns, and it was like playing at war when we were children."

"Did you hate the French very

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much?"

"Oh no, they didn't teach us to hate the French. They taught us patriotism, they taught us to follow the example of the great King Quang Trung and King Le Loi, who defeated the Chinese invaders centuries ago. And this was good because for the first time they told me about my country. Before I didn't know that I had a country, I didn't know what country meant.

"As the years went by, I got used to seeing death. I got used to all kinds of things. For instance, being hungry and not having shoes and sleeping in the rain and suffering. We suffered a lot, you know, though we had some good times as well. For instance, sometimes after a battle the commandant would tell us to dance and sing to forget the dead, and the peasants would give us fat ducks to congratulate us. And it was good when I would go foraging and would stop on the riverbank to fish and to dream of peace. Even though I couldn't imagine what peace was really like, because I'd never known it. All I've known, always, is war. But I used to imagine peace as a time when there weren't any dead, when my country was prosperous and happy and I was married to a beautiful girl."

Blowing Up My Canh

I saw him again last night. This time I was to be there at midnight. After a few minutes, Nguyen Van Sam came in. When they took off his blindfold and he saw me, he seemed very pleased. Then he put out a hand, greedily, to ask for a cigarette. I gave him the whole pack, and, as he couldn't take it back to the cell, he smoked it all during the interview, which lasted two hours. This was our conversation. I took it all down.

"I'd like you to tell me about the attack on the My Canh restaurant in Saigon. I'd like you to tell me how you felt after killing all those people at the My Canh."

He blushed. But he recovered himself at once.

"I felt, well, I think I felt the way an American pilot must feel after he's dropped his bombs on a defenseless village. The difference is that he flies away and doesn't see what he's done. I did see it. They were lying about, torn to pieces. Men, women, and children. It was like a battlefield after the battle, and I covered my eyes. It seemed impossible that I'd been the one who'd done it all, just by setting up the explosives. You see, that attack on the My Canh was my first one."

"Go on."

"Then I thought of my comrades who'd been killed and my friends who'd been tortured, and of the way the South Vietnamese cut off the heads of the Vietcong and put their . . . things. . . you know. . . their genitals in their mouths. . . . And this gave me strength because that's what you've got to think about when you start having doubts. My duty is to fight the Americans and those who collaborate with them, and to do this you sometimes have to kill innocent people. Innocent people dying is part of the pain of war, it's inevitable. You must realize there's not a great difference between firing a cannon, dropping a bomb from an airplane, and putting a mine under a restaurant where people are eating. One's as foul as the other."

"Sam, have you ever been religious?"

"Yes. When I was a child and my parents taught me about Buddhism because they were Buddhists. I've also heard people talk about Confucianism, and I've been to a Christmas service. I've also heard of that god with a fair beard called Jesus Christ. The one with wings, who flies about the clouds. He died in a cruel way I think: like a Vietcong. But when people are wicked he kills them and sends them to hell where they boil in pots of oil. The priest said so. And if people are good, he said, he sends them to heaven, where people dance and sing. I don't believe it. I know there's nothing when you die, that all

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our tears are exhausted on this earth. It's only children who believe in the afterlife or are frightened of it."

"Sam, is pity something that belongs to children, too?"

"Oh no. Pity is a virtue that belongs to men. When a man does something ugly, like cutting off the Vietcong's heads or putting their . . . things in their mouths, I get angry at once. And at the time I feel I hate them and then the hatred passes, it goes as quickly as it came and I feel a great pity. With the Americans it's the same. During the battle I hated them, but after the battle I no longer hated them, and I thought: they're innocent too because they're men. And I thought that some of them were volunteers, but the others were forced to be there, without knowing why, which must be horrible. I mean, fighting and dying without knowing why. You see, if there wasn't a war, if my country wasn't oppressed, I'd love everyone. This poor country of mine has always been under someone's foot—before, there were the Chinese, then there were the French, and now there are the Americans, and we've got to kill and kill and kill."

An American Pilot

The two A37s were ready with their bombs attached. They seemed to be made of bombs and nothing else. The bombs were under the wings, on each side were two napalm bombs weighing 750 kilos and an ordinary bomb weighing 500 kilos. The napalm bombs were about three yards long and about half a yard in diameter and were almost touching the runway. At the bottom, there must have been about 10 centimeters between them and the ground. So it was natural to think that if the plane shook at all they'd be bumped and explode.

"Oh, there's no danger," said Andy, the pilot.

We climbed into the cockpit and settled down in the seats. They were side by side. Mine on the right, his on the left. We buckled our belts and straps, fastening those that belonged to the parachutes; we put on our helmets and adjusted the respirators to our mouths. I felt vaguely ridiculous and thought, 'I'm glad there's no one to see me.' Then I thought, 'What a lovely day, the loveliest I've seen in Vietnam; it's not right to kill people on a day like this.'

Inside the helmet something crackled.

"Do you read me?"

"Yes, sir."

"The objective is south of My Tho. The remains of a Vietcong post must be eliminated and a landing strip built."

"If they hit us while we're nose-diving, I'll try to get the plane in a horizontal position, then I'll raise a finger and you jump first. I'll follow you at once. O.K.?"

"O.K., sir."

"If we lose each other, don't worry. Yesterday's pilot was recovered in less than 10 minutes."

"Yesterday's?"

"Yes, we've lost two planes on this mission. One yesterday and another the day before. But one of the pilots was saved."

"And the other?"

"The other wasn't."

He glanced at my shoes and started up the engines. They began roaring, the napalm bombs began swaying, the runway whizzed past and we found ourselves up in a cornflower blue sky.

"Beautiful, isn't it?"

"Yes, captain."

"I love this plane. In this one a pilot feels the way a race driver does in a Ferrari. Have you heard of the YAT37?"

He had become almost gossipy, his voice had changed, and there was nothing mild about it now. And somewhere, south of My Tho, a group of weary Vietcong were staring into the blue. Waiting.

"Captain, how long will it take us to get to our objective?"

"About 30 minutes."

Another 30 minutes and they'd be dead. Or we'd be dead. Or both of us

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together. Thirty minutes, that was all, and the sky was bright blue, and Martell, in the second plane was flying beside us, waving his hand. We could see him perfectly as he waved. How long is 30 minutes?

No time at all.

Tracing the Napalm

Suddenly we were over our objective and Andy said, "Here we are," and everything happened at once. The plane flew down, sweeping straight and evenly through space, in fact in the direction of the trees which grew larger and larger, closer and closer; now I could see the branches, then the leaves. They were being sucked up, they were coming to us in a whistle, or perhaps it was the bombs that were whistling. The bomb on my right dropped, he had let it go and it traveled down with us, parallel to us, very long and black: napalm. I saw it, then lost it. It vanished just as the trees were about to grab us, and I felt a wrench, a pleasant lightness, the swooping was over, the trees were over too, but in their place an invisible, impalpable stone had fallen, the bright blue sky had fallen on us and grown heavy, heavier and heavier, and it seemed to be crushing us, immobilizing us, tying our arms, our minds that could think of nothing but, 'Oh God, I'd never have thought the sky could be so heavy, oh God, make it light again.' It became light again and Andy shouted excitedly: "Fantastic! You were great. In 9 seconds we went down from 3,000 meters to 200 meters, we did six gs and you took it beautifully."

"Thanks, captain."

"Sight O.K.? Did you lose your sight?"

"No, captain."

"Next time, contract your stomach muscles and your arms really hard. And press that button, the one on the right. It's pure oxygen. Breathe pure oxygen."

"Yes, captain."

Not a word about the napalm we dropped.

"Didn't it go well, captain?"

"Of course. It hit right on target. See that black smoke down there? Now, it's Martell's turn."

Martell had nose-dived as well, a blue spot in the sky, and had dropped his bomb.

His bomb had also fallen where it should have, and the black smoke was rising. And Martell had flown back up there, a blue spot in the blueness, a carefree butterfly. 'Tell me, Nguyen Van Sam, what did you feel when you saw all those dead people?' 'I felt, well, I felt as an American pilot must feel after he's dropped a bomb. The difference is that he flies away and doesn't see what he's done.'

A Subtle Pin-Prick

"Watch it now, we're going down again," said Andy. "I'm dropping on my side."

The second time I was frightened and I wanted to escape, but where? I realized that the Vietcong were firing and I wanted to escape, but where? On the ground you can run away and hide, but in a plane you're in a trap as you are nowhere else. The third time I was resigned and only afraid I might miss the moment when Andy dropped the bomb which again was on my side of the plane. I didn't miss it, I followed it all. He pressed the button and the bomb seemed to shudder, and then lightly it unhitched itself and stayed there, suspended, then it leaned forward and came down with us until we flew up again. The fourth, fifth, and sixth times I was already used to it. I could watch the spectacle with a certain coldness. The spectacle consisted of small figures fleeing from dugouts and sandbag fortifications, waving their arms to beat off the flames, and one figure overwhelmed by the flames. If I said I felt guilt or pity, I'd be lying. I was too busy hoping Andy would do what he knew how to do, kill and avoid being killed. I had no time to weep for them and no wish to do so. Only at 3,000

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meters, when I knew I was safe, and watched Martell swooping down, did I feel a kind of pricking, but faintly, a pin-prick. And the pin wasn't my own conscience, but an intellectualized desire to have a conscience.

I'm trying to understand what I felt when Andy said we were going down a seventh time. Well, above all, I think I felt incredibly depressed. Then I felt a kind of excitement, a morbid longing to meet death. I knew perfectly well what it meant to nose-dive into machine-gun fire: it meant turning ourselves into a sitting duck, the easiest of targets, it meant daring the utmost, betting the limit. Then, well, I don't know. Maybe I felt that pin-prick. Maybe.

"It won't be much fun this time. Pray to God," laughed Andy.

"You'll be my God for the next 20 seconds," I replied.

And we went down.

And as we were going down I saw them clearly. There weren't many of them, five or six. They were in a single group, two at the machine gun, the others with rifles; they were waiting for us. Not moving. I remember thinking what courage it takes to stand quite still, waiting for a plane to swoop down on you. And I admired them so much. They weren't shooting yet. Then they fired. All those little lights coming up at us so fast, first together, then separately. And then I stopped admiring them and hated them. And in this hatred I prayed silently to the God I had swapped for Andy and said: 'God, make Andy kill them.' And at the very moment I was saying this shameful prayer I realized that Andy was already firing. He was pressing his finger on the red button and from the mouth of his 762 little lights flashed out, like those coming up to us. A Vietcong with a rifle rolled over. And then the Vietcong at the machine gun. And then the rest, together. And as each one died I felt relief, in fact joy, and I didn't care in the least that it was a man. A man whose side I'd have been on an hour before or an hour later. I didn't even care about the pain of going back into the sky, the pain of being crushed by darkness because the force of gravity had increased and was crushing me, blinding me. I didn't even care when we went down an eighth time to make sure they were really dead, and when at last I had to bear congratulations from a glorious, triumphant Andy.

"Absolutely fantastic! Nearly 8gs this time! You were terrific, great!"

A Day's Work

A crowd was waiting on the runway. When we got out they made a great fuss of us and waved my empty plastic bags, emphasizing the fact that I hadn't vomited. Andy had become shy again, with his mild voice and his nice eyes; nothing in him recalled the executioner who had so coldly killed the Vietcong. We went to have coffee, and I asked him how often he went on these missions and he said, "Three a day, on average." Then he told me he'd joined the Air Force in 1962 and volunteered for Vietnam at the start of 1967.

"Captain, why did you come to Vietnam?"

"I knew that I'd be flying the A37, and the pay was good. $275 a week, not counting bonuses. Each mission you fly you get a bonus."

"Don't you ever think of death?"

"I'm not worried about death. It's part of the day's work, part of my life."

"Your own death or other people's?"

"It's the same thing. In war, death is impersonal."

Martell came up to us and we had a second cup of coffee. Martell is from Canada originally, he was in Korea and has been in Vietnam a year and a half, as a volunteer.

"Major, why?"

"Because they'd have sent me, in any case. As a volunteer, I care more."

"Don't you ever think about death?"

"Who thinks about it here? It's all in a day's work."■

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Tidbits and Outrages

The Renegotiation Board is charged with recapturing excess profits in defense contracting. But, according to a recent study by the House Government operations Committee, the 100 largest contractors who receive about 70 per cent of the weapons business are so mammoth that they have been excluded from examination almost entirely—because of understaffing on the Board and loopholes in the law.

From Jim Clark, The Miami News:

Aside from bureaucratic inertia, we have come across a new reason why government can't accomplish much these days. It is the polar effect—where a federal agency on one side of Washington is steadfastly dedicated to undoing the work of an agency on the other side.

The mutual nullification has produced many candidates for the Most Absurd Contradiction Award. Three examples are listed below, and readers are urged to try to top these.

The most publicized contradiction involves smoking. While Daniel Horn of the National Clearinghouse on Smoking is paid by the government to encourage people to give up cigarettes, Hugh Kiger is paid by the same government to encourage people to smoke more. His job is to promote tobacco products abroad, although the effort is currently active in only two countries—Thailand and Australia.

At the White House, Presidential aide Harry Dent still spends a lot of time trying to deal with the threat of Japanese imports on the U. S. textile industry.

Next door, a Treasury official explains how the U. S. made Japanese textile production what it is today, by loaning the industry $300 million over the past five years.

In a similar vein, while President Nixon imposed a 10 per cent import surcharge to quell the flow of foreign cars into the country, the State Department negotiated a $13.5-million loan with Toyota Motors to allow it to increase production and thereby increase exports to the U. S.

Over at the Bureau of Land Reclamation, they spend about $384 million a year to convert useless land, such as deserts, into farms.

In California, for instance, landowners in the Imperial Valley benefit to the tune of about $14 million a year from cheap irrigation water that turns their desert into a fertile crescent. The taxpayers foot the bill because the project enriches the nation's breadbasket.

But while the Bureau gives the farmers the irrigated land, over at the Department of Agriculture the farmers get paid millions more to take the breadbasket out of production.

From Campaign Insight:

A poll conducted by political technicians Joseph Napolitan and Michael Rowan gives us a look at what voters who see a candidate only on TV expect from him:

Honesty: 47%
Compassion: 14%
Capable and qualified: 9%
A good person: 7%
A leader: 5%
Intelligence: 4%
Understands the issues of the time: 3%

The Bureau of Mines recently installed a telephone hot line which gives any miner in the nation five minutes after the beep to explain where he is and why he thinks his mine might cave in. The Bureau said it would take action the next working day after the calls.

Last month, a *New York Times* reporter, Ben Franklin, reported that the hot line had not been working right for two months. The Bureau explained that an overworked staff had caused it to be unattended from November 5 to December 26.

Two weeks after the Franklin story, we called the hot line, to be greeted with buzzing static.

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Rehnquist, Powell, and the Cult of the Pro

by Suzannah Lessard

On the surface, the Nixon nominees lend themselves to pleasing textbook simplicity. The starred four make a nice multiple choice: Haynsworth, unethical; Carswell, incompetent; Rehnquist, heretical; and Powell, correct. Behind them hover the disembodied grimaces of Herschel Friday and Mildred Lillie, sacrifices; the unsingular figure of Blackmun, who mysteriously escapes all pigeon-holes; and, raised a bit, Hollywood-handsome Mr. Justice Burger. Too bland to fit neatly into a multiple choice, he provides a neutral anchor to the schema.

The schematic neatness breaks down, however, when one tries to make the cast act out the object lesson they promise. Blackmun, it turns out, was guilty to the same degree as Haynsworth of holding stock in companies whose cases were before his court. The differences between Powell and Rehnquist seem, on inspection, a good deal finer than their characterizations in the press and in the Senate. Only Carswell escapes scrutiny, with his touted image as second-rate and sloppily bigoted in-

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tact, a glorious booboo who can be nixed by the student with the gratifying sense of hitting the bullseye. "We'll take the Burgers and Blackmuns, but not the Carswells," said Senator Birch Bayh after Nixon had floated out his six surprise balloons this fall. In the frantic search for Thomistic consistency, Carswell provides a welcome absolute, but unfortunately he is the exception, and no help against the quicksand beyond him. What does it mean to take the Powells but not the Rehnquists, the Blackmuns but not the Haynsworths? What principle would dictate that you reject the Haynsworths but accept the Rehnquists?

The answer is no principle, no lucid rationale or set of clean guidelines emerge from the turbulent court series. The search for dogma, itself relative to mood (no such fervor marked the confirmations of Kennedy or Eisenhower appointments), created more religious atmosphere than theology, and if anything, demonstrated the futility of the quest for rational and explicit justification in the vague constitutional mandate "advice and consent of the Senate." Looking back, it seems pretty clear that despite pious rationalities, the Senate liberals went

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after Haynsworth like a pack of dogs, had no choice but to go after Carswell, then, exhausted, were a pushover for Blackmun, and with Powell and Rehnquist attempted to make some sense out of their overall behavior. Having had their emotions trifled with by the six outrageous suggestions, they accepted both nominees after some well-ordered dissent, declarations of the need to avoid acrimony, and a good-humored reminder from Hugh Scott that if nothing else, they all held in common a desire to go home for the holidays.

Nevertheless, the principles proclaimed and the cornerstones bandied about during the melee, particularly with regard to the last two nominees, are worth examination, as are some unarticulated assumptions which guided the course of events as much as, if not more than, the spouted doctrine. The purpose is not to set up another set of guidelines—that would be impossible, as some of the principles are in irreconcilable tension, an example of what has been called the "beauty of the system." But the series does provide opportunity to examine the principles, point out some liberal foibles, and clarify a little more what we care about, and what we can expect the men we elect to do about it.

The question of how active a role the Senate should play in accepting or rejecting Supreme Court nominations was a major variable throughout the debate. Competence and integrity are clearly qualities on which the Senate has a duty to confirm or reject, although the standard is fairly flexible, as the different treatment of Haynsworth and Blackmun proves. The sticky issue is the third criterion, which has to do with the nominee's ideas. Actually, the rejection of Haynsworth on grounds of integrity was clearly motivated by his record on civil rights, and the outrage at Carswell's mediocrity was heavily fueled by his blatant racism; so philosophy was, underneath, a major consideration all along. But, nervous that they might appear to be attacking out of petty partisan spleen—though civil rights, it would seem, is an issue on which one can be partisan with a clear conscience—the liberal ranks generally clung to the simpler standards of competence and integrity as long as possible. When forced by Rehnquist—a man of undoubted ability and honor—to stand or yield on the issue of philosophy, many yielded, and

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those who did oppose him fumbled for the concept that would rank theoretically with competence and integrity.

The candidate must have an "awareness of the great issues of our times," said an illuminating *Washington Post* editorial. "The President has acknowledged that philosophy is a concern of his," said Senator Edmund Muskie. "If it's a legitimate concern for him, then that imposes a responsibility on the Senate"—implying that it isn't a legitimate concern of either, but if the President is going to be partisan, the Senate must stoop to retaliate. Birch Bayh, his idealistic armor a little tarnished from his recent politically motivated vote for Earl Butz as Secretary of Agriculture, named legal ability, integrity, and a demonstrated commitment to civil rights as the three standards by which senators should judge nominees. Claiming that Powell not only met all three but was, more important, "a humane man," Bayh went on to say, "It is this reason that compels me not just to vote for Lewis Powell, but to argue as persuasively as I can that this man meets the standard which we in the Senate are duty-bound to apply to any nominee, and when the time comes, to argue equally as vigorously that the second nominee, William Rehnquist, does not." Later, when Senator Roman Hruska accused the opposition to Rehnquist of insisting that nominees correspond to their mold, Bayh, stung, retorted, "How can the Senator from Nebraska make the assessment in the light of the fact that only one hour ago on the Powell nomination only one senator dissented. I voted for Lewis Powell. He is not exactly in the mold of the Senator from Indiana, and neither is the distinguished Chief Justice, Mr. Burger, but I voted for him and Justice Blackmun. How can the Senator say you have to have someone who marches along in lockstep?"

A defensive touchiness, a straining against charges of unreasonable partisanship and towards building a solid case for that supposedly definitive boundary that separates Rehnquist from Powell, pervaded the debate in the press as well as in the Senate. Acute discomfort with attacking a man for his beliefs alone (far more comfortable to attack a Haynsworth because of his beliefs but under the guise of attacking ethical indiscretions) betrayed an endemic liberal insecurity, especially noticeable in the relief with which opponents to Rehnquist would rush back to the safe warmth of accepting Powell.

The Squeamish Belief

The insecurity runs deep. The source, in an abstract sense, is the liberal distaste for being either pigheaded or doctrinaire (which you tend toward if you attack a man for his beliefs). Both are potentially disruptive, and both run afoul of the sweet desire for compromise and the gentlemanly atmosphere of reasonable debate. The Supreme Court controver-

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sies, however, conjured up the "Constitution," which, like "morality," sends the liberal conscience into a tailspin brought on by a collision between this distaste and another set of liberal fears—that of being spineless and wishy-washy. The conflict is between a sense of the necessity of openness and compromise, and the desire to be unmoving, "principled," (or pigheaded and doctrinaire) on fundamental issues. The latter urge provides a problem of its own—that of distinguishing the fundamental issues from the secondary ones. Important as it may be at the moment—and reason to accept or reject a nominee—a sensitivity to current issues of civil rights cannot in itself be construed as a basic and eternal requisite for sitting on the Supreme Court in the sense that integrity and competence are. Even more questionable is to say that this third "fundamental quality" can be isolated in the differences on matters of civil rights between William Rehnquist and Lewis Powell.

In *Nixon Agonistes*, Garry Wills dissects a similar set of liberal contradictions contained in the notion of academic freedom. One of his major observations is the liberal's aversion to "ideology," or systems of thought. "The only good idea is the particular insight. Make one idea capable of coupling with another, and it is already turning into a bad idea. Why? Because such combinations are like cartels, stifling competition in the marketplace of ideas. As long as one sticks to particular insights one is always 'open': no large segments of thought get automatically excluded, no particular segments are given even partial 'monopoly.' "

If anything, perceiving the contemporary importance of civil rights (in the narrow sense of the rights of ethnic minorities) is a "particular insight." The trap for the seers seems to be that they cannot stand firm on their insight without making it into grand ideological dogma—in order to justify obstinacy—about which they are not only congenitally squeamish,

but out of practice and therefore clumsy. The final irony is that shying away at the last minute from rejecting a man on philosophical grounds—even though that is unquestionably what troubles them—the opposition ends up pouncing on what he has done, digging up incidents from the remote past and making them into pass-fail issues, in the manner of that ideologue upon whose mention all liberals bless themselves for protection, Joseph McCarthy. Just as they pounced on Haynsworth's peccadillos, the result in the Rehnquist controversy was an absurd debate between Bayh and Goldwater over whether or not Rehnquist himself was involved, was likely to have been involved, or was nearby when black Arizonans were blocked and harassed on the way to the polls many years ago.

Leaning Together

The most telling difference between Rehnquist and Powell, as I see

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it, is intellectual style. Rehnquist, direct, consistent, and icily cerebral, comes on like an ideologue. Powell, fuzzier, seems to have arrived at his opinions through common sense and "particular insight," and hence they don't seem to hang together in quite so threatening a way. But neither, despite Bayh's avowals, have anything like a "demonstrated commitment to fundamental human rights." The chief evidence that Rehnquist has countertendencies is in the various opinions he wrote or helped write, many of them years ago. Powell, on the other hand, as chairman of the Virginia state board of education in the 1960s, in the face of desegregation suits advocated "freedom of choice" or state-funded tuition to private schools for those who chose not to integrate. He was lauded in the Senate for working hard to keep the public schools open, from which it was apparently deduced that he was dedicated to integration. Freedom of choice is the segregationists' alternative to closing the schools. According to *Washington Post* reporter John Mackenzie, last year Powell prepared a friend-of-the-court brief urging a slowdown on bussing. The Supreme Court refused to let him argue and rejected many of his arguments unanimously.

Rehnquist is more explicit than Powell in his recommendations for inroads on the first amendment—particularly as regards free speech for federal employees and extensive wiretapping, but Powell has hardly shown qualms about such alterations in the law. Speaking of domestic dissidents, he has said, "There may have been a time when a valid distinction was made between external and internal threats. But such a distinction is now legally meaningless. The radical left, strongly led and with a growing base of support, is plotting violence and revolution." Powell's dictum reveals a much weaker grasp of the realities than one would hope for in a Supreme Court Justice. Nor is this an isolated example. An exaggerated horror of "disorderly demonstrators" and anti-establishment sentiments, with little or no evidence that he is aware of the reasons behind such movements, pervades his rhetoric.

Powell and Rehnquist have both explicitly stated that they strongly favor dramatic retrenchment on the recently expanded constitutional rights of defendants. Rehnquist considers the revelation that minorities feel strongly about their rights as a satisfactory explanation for why he has "changed" his views on those rights—"A judge is supposed to take into account the rights of everyone, including those who don't even know their rights, much less feel strongly about them," exploded Herblock in a letter to the *Washington Post*—Powell, in tones of moderation, states "the need is for greater protection, not of criminals but of law-abiding citizens," missing, as a letter to *The New York Times* pointed out, that it's not just "criminals" but persons accused of crimes that are protected.

These are perhaps small slips; all the sketchy evidence here is insufficient to make a judgment. But it is an indicator of why, to me anyway, Rehnquist and Powell both give the strong impression, not just that they are oriented to the establishment, government powers, and authority in general, but that they don't really understand the dangers that the Bill of Rights guards against. They seem to feel, at the bottom, that if you are innocent you will get fair treatment (that those rights really only give the guilty loopholes through which to escape punishment), that the government is made up of reasonable men against whom only troublemakers would dissent (why go to such lengths to protect them?) and that as long as a citizen is "law-abiding," what difference does it make to him if the government listens to his conversations?

The Sweaty and the Gentle

In trying to figure out why Rehnquist's opponents got such bad vibra-

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tions from him, yet reacted as favorably to Powell, it's difficult to overlook the social overtones of remarks about Powell. "To many, Powell represents the type of cultured, responsible, white leadership the upper classes of the South have promised and so often failed to produce," said an article in the *Washington Post*. On the floor, liberal supporters rose to laud his distinguished legal career, to refer to him insistently as a gentleman, and often to note that they held many friends in common, progressing to the curious and disturbing spectacle of men like Senators Bayh, Percy, Hart, and Mansfield joining Senators Fannin, Eastland, and Robert Byrd to expound enthusiastically on the nominee's deep dedication to civil liberties and the Bill of Rights.

Going beyond the nasty feeling that the fundamental distinction between Powell and Rehnquist is that the gentleman from Virginia would make a charming dinner guest while the Goldwater conservative from Arizona, brazen, a little sweaty, and outspoken, would be a disonant presence, one gets back to the liberal susceptibility to intellectual style. His content may not differ that much from his co-nominee's, but Powell speaks gently, with an air of moderation, wisdom, tradition, whereas Rehnquist at times tempts one to do a take-off in a heavy German accent. Garry Wills gets at the core of this distinction. He quotes Arthur Schlesinger: " 'But a difference remains between a faith which is submerged and one which is formulated and codified in a body of dogma'. . . a priceless unintended revelation of the liberal mentality. If one is going to have principles or system it is better to keep them submerged, half-conscious, unadmitted." Powell's attitudes are all half-submerged, soft-form, and further veiled in the pleasing hues of classy respectability. Rehnquist is hard-edge. He leaves no question about his views. He doesn't cut his opinions with that soothing politesse of indefiniteness.

The Legal Theologians

A quite different set of arguments was made for the acceptance of both nominees. They are the product of a special brand of legal-minded liberalism, and while self-enclosed, they represent in concentrate, attitudes which exist in more diffuse, muddier forms in the wider community of politicians and observers. They come closest of all liberal concepts to espousing an ideology, in that for them the "natural laws" of the system are of supreme importance and "particular insights" should be subordinated to the overall functioning of those laws.

Thus, John Frank, a constitutional lawyer and Supreme Court expert in Phoenix, Arizona, writes of Rehnquist: "Bill has been an intellectual force for reaction. I do not believe he will put the manacles back on the slaves, but I'm sure from his point of view it will be more than a pause. . . there will be a backward movement. In terms of race relations I would expect him to be retrograde. He honestly doesn't believe in civil rights and will oppose them. On criminal matters he will be a supporter of police methods in the extreme. On free speech Bill will be restrictive. On loyalty programs. . . he'll be 100 per cent in favor. . . . By normal standards of Supreme Court appointments, Rehnquist is unequivocably entitled to be confirmed, regardless of his philosophy." It's all true, and horrible to think of, but we must eat humble pie before the rules of the system.

Why? Benno Schmidt Jr., an associate professor of constitutional law at Columbia University wrote a letter to the Senate Judiciary Committee recommending Rehnquist's confirmation:

One who reveres the person and performance of Chief Justice Warren, as I do, cannot but look forward to Mr. Rehnquist's likely decisions with some misgivings. But protecting the independence of the Supreme Court by subjecting nominees to an outcome-determinative test is self-defeating. Ultimately those who believe in the essential

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role of the Supreme Court as an active and principled protector of individual liberties must rest their faith on process, not outcome.

As Schmidt explained it to me, the reason it is self-defeating for senators to approve or disapprove of a nominee according to whether they agree with the votes he is likely to cast, is that if everyone in the Senate insisted on a Justice with views which were acceptable to him, then we would end up with a Court which closely reflected the consensus of the legislature, thus gravely undermining the function of the Court as a separate and independent branch of government. Looking at your own vote in terms of the whole system, over time, if you cast a vote against a Rehnquist then you have to accept the right-winger's prerogative to cast a vote against a Douglas. Since the two of you are likely to agree only on a middle-of-the-roader, then the cost you have to be prepared to accept if you vote against the Rehnquists is, in time, a middle-of-the-road Court. Such a Court would not be likely to produce those dissenting opinions on either side of the center which have hitherto been such an important part of constitutional law—a dialectic which has ultimately benefited the libertarian view.

These are the only true theologians in the crowd—no fickle casting around for convenient principles here—but they are not totally unrelated to the sloppier hybrids in the ranks. Their sublime faith in the system—process over outcome—governs much liberal behavior in vaguer, more diluted forms, evident chiefly in that ingrained reluctance to take risks with the smooth workings of things by forcing confrontation, or by taking uncompromising stands no matter how deeply concerned one might be with the issue. This is the tendency which comes crashing into conflict with the desire to think of oneself as ready to stand up for what one believes, which, given the currency of issues like the war, has been especially plaguing of late. Mr. Schmidt has, of course, handed anyone so plagued with the perfect solution: the principle on which you can stand is the principle of the system, of process, but such clarity has never been, nor is it likely to be, characterisitic of politicians, which is one of the reasons why the theory doesn't work.

The problem with the concept is that the system isn't a museum model. There is no way that everyone in the Senate is going to think in these terms. Seventeen senators from the South voted against Potter Stewart—hardly a far-out leftist—when it became apparent he wasn't inclined towards reversing *Brown vs. Board of Education*. A tome full of precedents of liberals humbly accepting more segregation-oriented nominees would not have been likely to change those votes. When a Senator casts a vote, he isn't writing the Constitution. If he decides to swallow his misgivings in favor of the process, all he is guaranteeing for the interests he represents is that next time, when his kind of candidate comes up, he can upbraid his conservative colleague for voting nay without contradicting himself. If he's still around. And if his kind of candidate does come up.

Process is important, and it's of great importance also to have people around reminding us of its value, in clear terms. But the role that value should play has to be relative to circumstances. If the Court were well populated with civil liberty advocates, then it would make sense to vote for a Rehnquist; then, essential concerns reasonably well safeguarded, one could surrender to the dictates of process without fear. But when the preservation of certain principles such as free speech (the linchpin of the Bill of Rights and far more directly threatened than the civil rights of ethnic minorities) is in danger of cavalier treatment, then one must be prepared to take chances with systematic principles. When a President is filling up the Court with people who are antipathetic to what you consider crucial

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concerns, in a time when popular opinion is also tending in that direction, then you cannot risk those values in the abstract interest of process. It doesn't make sense to take a concrete risk that the next decade or two will witness specific setbacks in these areas—with real effect on people's lives—on the grounds that by taking that risk you affirm the theory according to which, over a hundred-year span, those crucial principles in a larger sense, will be well served.

To borrow a phrase, it is not self-defeating but imperative that some of the people in the system some of the time be willing to subject the process to a short-range "outcome-determinative test." That is why, where Benno Schmidt would have been concerned for the system if the liberal flank had solidly voted against both nominees, I am equally concerned for the system that so many voted for them both, and that only one senator, Fred Harris, chose to vote against them both.

The Pro Ethic

If reverence for smooth process, less codified than Schmidt's, but instinctual, propelled many towards accepting both nominees, another kind of reverence—the pro ethic—also played a part in the crosscurrents of motivation. In a way, the liberal community set the trap for itself. Justifiably horrified, it launched into stern rebuke at Nixon for the mediocrity and lack of distinction that characterized the Lillie-Friday six—"only two of the six are recorded in *Who's Who*," remarked the *Post* disapprovingly, a little like a grande dame confronted by her daughter's salesman boyfriend. When Rehnquist and Powell, both undeniably of a high caliber, were finally named, editorials stammered in relief for days about how important it was to have "distinguished" people named to the Court, which is how the exaggerated appreciation of Powell got started.

Rehnquist lent himself less well to the general taste for "distinction" but offered a more specialized brand. He was brilliant. Joe Kraft expressed his estimation of the significance of this quality quite plainly. "Rehnquist will restore intellectual distinction to the Court. . . . The central political problem of a populist country is to preserve some modicum of elite values—respect for achievement; toleration of differences of outlook; regularity of procedure. . . . The Supreme Court has come to be the defender of these values—the elitist institution in a populist country." Then, even more bluntly, "What the court needs is brains." The pro ethic exercised a strong influence on the liberal defenders of both Powell and Rehnquist, but in slightly different forms.

Powell possesses a rich cluster of certifications by which the establishment recognizes a top professional: partnership in a prestigious law firm, membership on powerful corporate boards, presidency of the ABA, social status, and the manners, appearance, and life style of a gentleman. The Senate and the press seem to have read these signs in a schizoid way. On the one hand they meant Powell was eminently worthy and capable, the kind of grade-A talent we want in high levels of government. On the other hand, this genre of certification has been discredited in the last decade. People no longer assume that those tags guarantee performance and are suspicious that the merchandise may be less than first rate, that the holder could just as well be a bumbler as an ace. So the other side of the perception of Powell is that he is harmless—conservative maybe, but not likely to be terribly effective, and probably not original and creative enough to take shocking positions, even though his disposition, fuzzily, tends in those directions. The scion of propriety, he will shy away from doing anything that will stand out.

As the image of the pro as the establishment-certified gentleman faded—as Groton alumni no longer rose in such numbers to positions of

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power—it has been replaced by the brash, mind-like-a-steel-trap young man from nowhere. The prototypes are the aggressive, brilliant people whom Kennedy gathered around him, and on whom he came to rely increasingly as the princes of the establishment, many of them holdovers from Eisenhower days, failed him. Though we are more familiar with the type when cut out of a different philosophical cloth, they are the Rehnquists.

Among those who supported Rehnquist from a liberal standpoint, professional excellence was, if not, as with Joe Kraft, the only reason, at least the saving grace. When people get labeled brilliant at every turn, one sometimes wonders whether the label isn't a mindlessly parroted exaggeration, but even a cursory look at Rehnquist assures one that the man is impressive. Many of the passages quoted from articles written over the years, including that memo recommending a return to the separate-but-equal doctrine, reveal a subtlety, agility, and ability to penetrate to essentials, which is dazzling.

As conservatives of that caliber have not been appearing in droves, one longs on discovering Rehnquist, to sit down with him and pit your arguments against his. You know that you would get to the real issues. The combined agility and depth of his thinking guarantee that argument would not be a Buckley-type dueling match but a creative challenge to the basic precepts of one's beliefs.

So there is no question that Rehnquist's qualifications are headily seductive. And they should be. It *is* of the highest importance that professional excellence characterize members of the Supreme Court and any other crucial position. But one cannot look at those qualities as though they are neutral; they are neutral only insofar as one grades a professional as a technician. The technician cannot be separated from the ends to which he employs his skills—particularly in a judge. An assumption behind the Kraft position is that ultimately intelligence agrees—or arrives at what is "right." Brilliant lawyers, for instance, are likely to arrive at the same estimation of the merits of a given case—even if they have dramatically antithetical sympathies. But in no way does it follow that they would arrive at the same verdict, should they be in a position to judge the case.

Professional excellence is indeed valuable, if not indispensable on the Court. A precise, penetrating mind like Rehnquist's could be a contribution not only in itself, but in prodding sloppier thinkers to shape up. But that doesn't cancel out the fact that he, with Powell and the other Nixon selections, have expressed their proclivities away from the values of free speech, civil liberties, and the rights of accused persons, and now are close to holding it in their power to turn the Court in their own direction. If that happens, the consequences will be equally damaging whether it is done brilliantly or by mediocre minds.

Putting philosophy before professional excellence in choosing the people you want in government doesn't mean that when you get the person with the right philosophy but second-rate skills you accept him. Nor does it mean that you reject a Rehnquist without bitter regrets. Attacks on the pro ethic so often leave the unspoken assumption that having seen how far astray the whiz-kids can lead us—Vietnam, for instance—intelligence and technician-like excellence should not feature as a key prerequisite for aspirants to power. You want both. The admiration Joe Kraft expressed isn't misplaced, nor is the desire for such admirable qualities. But if a person's beliefs run counter to beliefs the protection of which you consider of vital importance, you can't say, oh, well, that's canceled out because he's brilliant any more than you can say it doesn't matter because he's a gentleman. Direction, intent, remains the same whether it's pursued in a brilliant, or gentlemanly, or mediocre fashion, and so must the objection to the intent.■

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An Irresistible General, An Immovable Justice

a review by Theodore J. Lowi

Kennedy Justice by Victor S. Navasky. Atheneum. $10.

In an era abundant with nonfiction books on American politics, *Kennedy Justice* ranks among the best. But it is also one of the most frustrating. In an era overflowing with critical works intending to improve the race through shock, *Kennedy Justice* is a sober, factual, sympathetic treatment. Yet it may be the most frightening, precisely because it does not intend to be.

These are contradictions, not of logic but of purpose and design. They are contradictions inherent in the subject, the book, and the hero.

In such a context it is important to report at the outset how well the hero comes off. Robert Kennedy looks good in *Kennedy Justice*, surprisingly good considering that the author is a Yale Law School product who knows firsthand the Yale tradition that Kennedy recruited for Justice, who was alienated from that tradition, and who has been notably effective at poking holes in it. In this book, Victor Navasky also poked lots of holes, but through those holes he looked, and he found a leader far more formidable, far more capable of growth, and far more sincerely committed to the public good than the person, the author, or almost anyone else could have expected.

This is an extraordinary finding. Robert Kennedy's only great failing seems to have been Jimmy Hoffa, and this was at least an epic failing born of epic flaws and epic commitments to the public good. The prosecution/persecution of Jimmy Hoffa is a study in the abuse of the vast discretionary powers of the prosecuting attorney, and it is an ideal study of this particular wielder of the powers. Navasky skillfully uses the Hoffa story as a Kennedy character sketch, and through this sketch we can begin to understand Kennedy jurisprudence, Kennedy government, Kennedy public philosophy, which is as threatening as it is simple.

To Kennedy, reports the author,

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"there are two kinds of justice; one for society's enemies, another for its victims." Justice for society's victims means a justice of strict legality, respect for established forms, and at the same time sympathy for the needs of the downtrodden. For society's enemies, justice apparently means taking men of excellence and having them decide the question of probable guilt. If the verdict is guilty in their considered judgment, they would then be expected to proceed for results without too much regard for forms and legal procedures.

This distinction between society's enemies and society's victims is the principle underlying the contradictions in *Kennedy Justice* and of Kennedy justice. It ties together the Hoffa case with the Kennedy of the McCarthy committee, the Kennedy who could authorize a Martin Luther King phone tap, the Kennedy who could vigorously pursue civil rights, the Kennedy who could back away from the FBI, and the Kennedy who could prosecute family friends and relations without fear or favor.

In all these matters and still others, especially the chapters dealing with the southern governors and with the reapportionment cases, Navasky makes a good accounting. That is, he carefully weighs all the facts and presents a responsible balance sheet. Nevertheless, there is a gnawing frustration in all of this responsible reporting, and it took a long time to figure out what the frustration arises out of. It's as though Navasky the accountant drew up a balance sheet for the wrong company, or maybe for one unit in a large conglomerate. To use another analogy, *Kennedy Justice* is to Justice what a highly instructive essay on jazz would have been to a musician in the 1920s who had gone stone deaf in 1875. The facts may balance, but they don't cumulate, and I think I finally figured out why: the author used Justice to understand Kennedy when he should have been trying to use Kennedy to understand Justice. This has to be why such an exhaustively researched and well-balanced book could be so frustrating, and why such a sober treatment could be so unsettling.

Parkinson's Justice

Without intending to, Navasky has established beyond one's most pessimistic expectations the fact that the Department of Justice is reactionary in a world of change. In the first instance, it is reactionary because it is officially committed to the defense of the social order, as bureaucratically defined. In the second instance, it is reactionary because it is designed to react to external events, not to initiate, or to initiate in specific "cases or controversies" only as the internally defined status quo requires. New personnel, good intentions, and great excellence will not change that. In the eyes of entrenched bureaucrats, political executives, even from Camelot, are birds of passage, and birds of passage pass without leaving too much of a depository, even when they have magnificent plumage.

When you get right down to it, we may not want it any other way. If there is to be a social order there has to be some institutionalized defense of institutions. But if that is the case, then it is either foolish or insincere to take over that particular department as the instrument for determining the course of change. It is frightening to see how completely the Justice bureaucrats could thwart duly elected authority, and more so to learn how Kennedy confirmed and reinforced Justice conservatism even when he was trying buck it. But the most surprising part is that neither the hero nor the author seemed to be fully aware of what was happening to them.

Two passages epitomize book and hero. First, "The Kennedy system constituted a rare capability. That the values it served were unspectacular, that this capability often went unrealized, does not detract from the astonishing fact that its mere existence helped transform the bureaucracy."

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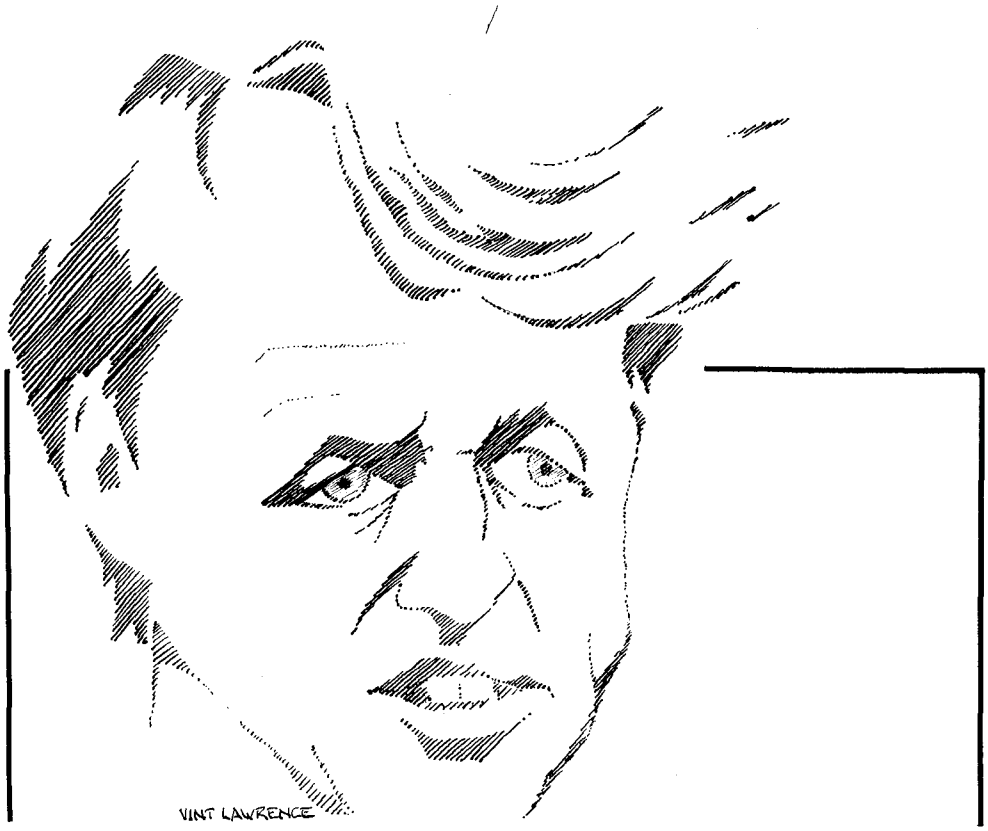

The second passage is Navasky's final question coupled with his own answer: ". . . given the rare combination of charisma and capability. . . why did Kennedy Justice, in so many ways, fail to transcend the conventional?" That question makes one wonder what the author meant earlier by helping to "transform the bureaucracy." Nevertheless, Navasky's answer is that, "ironically, [a review of significant actions taken as Attorney General] misses Kennedy's most lasting and least conventional contribution: his impact on those with whom he worked and, through them, on the humdrum routine of the Justice Department itself." Navasky goes on then to review those personal Kennedy characteristics that contributed to his unexpected impact on the members of the Justice Department. And this may be the most unsettling part of all, that charisma, commitment, and the demand for excellence are simply not enough.The times had moved the requirements of justice far away from the requirements of Justice, and all the Kennedy horses and men.

Navasky's own accounts of the most significant issues of that period unintentionally confirm the innate conservatism in almost every way. Probably the best case is his account of Kennedy's campaign against organized crime, which reveals as much about Justice as the Hoffa case reveals about Kennedy. Without any question, the issue of the Mafia—virtually getting its existence established as the opening to a campaign against organized crime—was more important than any other to General Kennedy. In his zeal he manfully and unprecedentedly confronted the FBI, and, as we learn in the Navasky balance sheet, General Kennedy threw away his chance to transform the FBI only because he feared a confrontation with Hoover might undermine the larger goals of his brother's Administration. Here, truly, is an ancient sense of honor, family loyalty, nobility, a feeling for the bigger picture rather than program commitment or legal obligation—and

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that, indeed, is an important insight into the Kennedy character. But what is more impressive is the part of this story not put explicitly into the balance, which is that Kennedy finally *did* confront and beat the FBI in the battle to establish the existence of the Mafia, but that the price he paid was the actual enlargement of the power and independence of the FBI. Kennedy did not fail to confront the FBI. He lost to the FBI in all matters that involved its integrity or the larger bureaucratic integrity of Justice.

For another example, take the far less important issue of raising the ransom to free the hostages taken by Cuba during the Bay of Pigs debacle. It is quite clear that the ransom would never have been raised without the Kennedy commitment and the backing of Kennedy Justice. However, as Navasky reports it, most of the pharmaceutical houses contributing the millions of dollars in medical supplies got tremendous tax advantages from their contributions, and almost every one of the 60 contributing firms was under investigation by the Antitrust Divison of Justice or the Federal Trade Commission. In fact, 18 of these firms were already actual defendants in existing antitrust or FTC cases. It is a wise and vigorous politician who plays on the weaknesses of others, but a stupid one not to realize who is exploiting whom. The Cuba caper was almost a guarantee against serious disruption of the business status quo for many years to come. This is not a quibble over questions of petty corruption. It is a case of actions taken for the achievement of a particular result that unintentionally produced far more fundamental results.

Electronic Insurance

Far and away the most important account in the entire book, and at the same time the one that most clearly confirms the capture of General Kennedy by the conservatism of Justice, is Navasky's story of Kennedy-FBI relations concerning the southern civil rights movement. This is certainly a clear case where Kennedy and his top people were sincerely dedicated to change. No one seems to have questioned their sincerity, and they were not lacking in resources, effort, intellect, or cunning. Yet not only were few of the changes in southern race relations attributable to their efforts; the unintended impression conveyed by Navasky is that Kennedy efforts in civil rights were on net *counter*productive.

For example, their bringing Martin Luther King into the inner councils of decision-making only tended to reduce King's freedom of action and to squelch his poetic appeals to southern blacks to set aside their fears and demand their dignity. Moreover, Navasky became convinced after a careful examination of the records that Kennedy personally authorized the controversial King telephone tap on the mistaken notion that this would operate as a kind of "electronic insurance policy" to protect King and the Movement from the release of damaging hearsay on King's association with communists. What better reinforcement of the FBI could there be than to concede to them the claim that they have the right to invade privacy at their own discretion and that they can use the results not in court but to blackmail the Attorney General of the United States?

Another example of the counterproductive tendencies of the Kennedy civil rights approach is probably more fundamental in the long run than his cooperation with the FBI in wiretapping. This was his acceptance of the intimate association between the FBI and the state and local officials. In any investigation, whether a fishing expedition or an inquiry into a specific case, the FBI makes it a point to cooperate fully with state and local law enforcement authorities. In a kidnapping, gambling, or white slavery case this may be an indispensable relationship. But it is a total absurdity in all those civil rights cases in which

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law enforcement authorities themselves are being charged with malfeasance, misfeasance, brutality, and murder. The Kennedy corps recognized this and decided to do nothing about it. Rather than confront the FBI with the problem, or to create a new agency to deal with official wrongdoing, the Kennedy people chose to carry out these investigations themselves on an ad hoc basis, sometimes using people in the Criminal Division, sometimes drawing on Tax, and so on. Here we have another testimonial to their dedication, their cunning, their energy, and resourcefulness, their brilliance, their utter nobility. But we also have a case of actions that reinforced Justice conservatism. In flanking the FBI they had confirmed the FBI; they had unintentionally abandoned the gut issue of institutionalized bias. The real changes in the use and abuse of local government power against blacks came from the Movement and, ironically, from Congress, through new legislation that sought change outside Justice.

This record of counterproductiveness in civil rights is not worse than that of other Attorneys General. Judged against earlier performances, the Kennedy record is clearly superior. But judged against the high standards set by New Frontier rhetoric and extended in and by *Kennedy Justice*, the record of Kennedy Justice is a dismal flop.

Another example of sincere effort producing contrary results may have been more directly demoralizing to the Movement, even though in the long run it may prove to be less fundamental than the other examples. During the Kennedy years, Congress and the courts armed Justice with a tremendous amount and variety of legal authority in the civil rights field. But unfortunately, the Kennedy people apparently defined civil rights as a problem of dealing with "society's victims" rather than "society's enemies," because they proceeded with extraordinary caution and respect for legal procedures. They made elaborate assumptions about the honor and dependability of state governors and other local and state officials, and they even developed a doctrine supporting negotiation with these people despite the fact that almost all of the legal authority was on the civil rights side. One is supposed to bargain when legal positions and economic resources are close to equal on both sides. In civil rights, that was not the case, and Justice bargaining on clear points of law only served to weaken the legal position of the government and the moral position of the Movement. Little wonder Black Power emerged with hostility toward conventional politics.

These examples are tragic because they are the unanticipated and undesired results of men who were zealous and sincere about their responsibilities to bring about social change. Their enemy was the Justice Department bureaucracy. They met the enemy and they were had.

The Limits of Charisma

Out of all this, in a very long book, Robert F. Kennedy emerges as something of an epic character. But if the analysis stands the test of time, I think Robert F. Kennedy will turn out to be another Robert E. Lee, whose memory improved as it mellowed, and whose character traits were used in civic instruction totally aside from the cause he fought or the results he achieved. But as with Lee, Robert Kennedy the Attorney General will have more to teach us in failure than in success. It is in this that *Kennedy Justice* serves us poorly, so poorly that the reader must instruct himself.

The first instruction is that Justice is a legal office; it can never be and probably should never be anything else. It is no place for policy innovation, no instrument for vast social change. In a complex society, substantial innovation is unlikely under any circumstances; but if there is any chance of innovation at all, it will

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come from outside Justice, and it will have to be imposed on Justice. The best we can hope to do is to hold Justice, especially the FBI, to its own pretentions and to prosecute Justice's officials vigorously for their own violations of law.

This leads to a second instruction, which is that in legal office, legality is supreme. As with so many men of family and nobility, Robert Kennedy approached the polity with goodwill and the attitude, "What's a constitution among friends?" Navasky impatiently called much of Justice's backtalk and logic-chopping "Bureaucthink" or "FBI-ese," but it was merely legality taken to its bureaucratic extreme. The Kennedy people brought politics to Justice and assumed that politics meant bargaining when bargaining only weakened their legal position and strengthened the legalisms of the bureaucrats. We can learn from this experience something the Kennedy people did not learn and that *Kennedy Justice* did not explicitly teach, which is that the only way to fight legality is with higher legality, not with sentiments, not with heroics, not with skillful negotiation. There were higher laws to which Justice should and would have been beholden if Kennedy had chosen, as he did in reapportionment, to fight law with law, legality with legality.

The third instruction is related in turn to the second: real innovation in a Department dedicated to maintaining the status quo requires the creation of a new status quo, to which that Department will ultimately dedicate itself. The FBI eventually did enter into the Mafia campaign, after they were faced with the prospect of new crime-fighting functionaries. The FBI eventually did enter the southern civil rights fight more vigorously, after the Movement had made change normal and HEW and other agencies had made the process of integration almost a part of the status quo.

A final instruction to be drawn from the interstices of the book is that if innovation by government is ever possible it will ordinarily require a new bureaucracy. Innovation does not seem possible through established bureaucracies. The issue is not how to turn the FBI around. Where Justice is concerned it seems compellingly clear that at a minimum Kennedy should have established a new agency to deal with all questions concerning the 14th Amendment and "state's wrongs." The present situation, in which legality means full faith and credit in state and local law and law enforcement authorities, can never be one in which the system can deal with official wrongdoing.

It was only after all this self-instruction that I could begin to understand and appreciate Navasky when he concluded that Kennedy's rare capacity served conventional values, went largely unrealized, and yet "its mere existence helped transform the bureaucracy." It meant that the Kennedy presence uplifted the civic character of the bureaucrats. But what is all that if the cause is not just (Hoffa) or if the goals were not achieved (civil rights)? Civic uplift is indeed better than nothing, but the old dog still lies there wise and immobile; and the question remains, how do we teach an old dog, a wise old dog, new tricks?

According to an old folktale, there are two ways to get a dog to eat hot mustard. The first method is to try and convince him it tastes good. You can speak of its appetizing qualities, you can associate it with things the dog already likes; you can prod him and scold him. But that method will probably fail; it is most unlikely he will come to eat the stuff because he likes it. The second way to get him to eat burning mustard is to spread it on his hide and make him so uncomfortable that he has to lick it off. That's the only sure way to teach a wise old dog new tricks.

Senator Kennedy found this out. This is why Senator Kennedy will be a much more important and memorable figure than General Kennedy.■

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POLITICAL BOOK NOTES

A listing of public affairs books to be published in February.

The American Way of Violence. Alphonso Pinkney. Random House, $7.95, $1.95.

Are Our Descendants Doomed? Harrison Brown, Edward Hutchings, Jr., eds. Viking, $12.50.
Proceedings of a conference on the impact of technological change upon the growth and concentration of human populations.

Bayonets and Daisies: The Militia's Role in Civil Disobedience. George H. Olmsted, Jr. Acropolis, $6.95.
Author predicts a steady growth of violence in the next decade in the United States and gives his analysis of what kinds of violence will develop, who it will be aimed at, and what the U.S. Army plans to do to control civil disturbances.

Canyon: The Story of the Last Rustic Community in Metropolitan America. John van der Zee. Harcourt Brace Jovanovich, $5.95.

College Days in Earthquake: Ordeal at San Francisco State. Leo Litwak, Herbert Wilner. Random House,

Has the Catholic Church Gone Mad? John Eppstein. Arlington House, $6.95.
Eppstein believes that the Papacy and the Catholic Church will survive what he sees as an attempt to adulterate faith and authority with the current nostrums of a decadent Western civilization.

Ideology in America: Change and Response in a City, a Suburb, and a Small Town. Everett Carll Ladd, Jr. Norton, $2.95.
A political scientist examines the rapidly changing character of American society in the 1960s and how the change is reflected in the political thinking of three Connecticut communities: a troubled central city, one of its fast-growing suburbs, and a declining small town.

If Men Were Angels. Milton Mayer. Atheneum, $12.50.

The Limits of Power: The World and U.S. Foreign Policy 1945-1954. Joyce and Gabriel Kolko. Harper & Row, $15.

The Megastates of America: People, Politics, and Power in the Ten Great States. Neal R. Peirce. Norton, $12.95.
A political, governmental, geographical, industrial, ethnic, metropolitan history and overview of the 10 states which account for 55 per cent of the population, 62 per cent of the manufacturing, 60 per cent of the bank assets, 59 per cent of personal income, and 60 per cent of state and local government spending.

Motion Will Be Denied: A New Report on the Chicago Conspiracy Trial. John Schultz. Morrow, $11.95, $3.95.

The New Left Today: America's Trojan Horse. Phillip Abbott Luce. Capitol Hill, $6.95.
An account of the personalities and organizations which make up today's New Left, by a former member. The author traces his early years in the New Left movement and describes his break with radicalism when he realized how he had been deceived.

Nine Lies About America. Arnold Beichman. Library Press, $7.95.
An argument by an old-school liberal and journalist against the prophecies of the New Left that the U.S. is headed for ruin because of corruption and fraud in "the system."

Nothing, and So Be It: A Personal Search for Meaning in War. Oriana Fallaci. Doubleday, $7.95.
See adapted excerpt in this issue of *The Washington Monthly*

Our Time: An Anthology of Interviews from the East Village Other. Allen Katzman, ed. Dial, $8.95, $2.65.

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Political Brokers: People, Organizations, Money, and Power. Judith G. Smith, ed. Liveright/National Journal, $7.95, $3.45.
Investigates the people and pressures that interact to shape government policies, focusing on the major special interest groups, such as the ADA, National Republican Congressional Committee, and Common Cause, who spend time and money to influence who gets to Washington and what will happen after they arrive.

Politics in the Post-Welfare State: Responses to the New Individualism. Gideon Sjoberg, M. Donald Hancock. Columbia, $12.50, $3.50.
Essays dealing with the social problems of the modern industrial state with a cross-national perspective. Contributors include Christopher Lasch, Dennis McQuail, Jon Alexander, Dusky Lee Smith, Kaj Bjork, Erik Anners.

The Politics of Belleville: A Profile of the Civil Community. Daniel J. Elazar. Temple, $8.50.
A study of the political behavior of a community in Illinois submerged in a metropolitan area but commanding primarily local loyalties, which the author feels illustrates how urbanized America can retain a human scale in social and political life.

Politics, Poker, and Piety. Wallace E. Fisher. Abingdon, $2.95.
Fisher focuses on the relationship between Christ and culture, faith and political action, belief and patriotism, piety and politics. He sees a clash between church and state unless the churches begin to realistically examine their role in the life of the state.

VIOLENCE!
The Crisis of American Confidence
Hugh Davis Graham, Editor

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The Rosa Luxemburg Contraceptives Cooperative: A Primer on Communist Civilization. Leopold Tyrmand. Macmillan, $6.95.

The Science of War and Peace. Robin Clarke. McGraw-Hill, $10.
Given the increasing frequency of war throughout history, the author suggests that human evolution will not last much longer and outlines ways in which this catastrophe may come about and what must be done to avoid it.

Search and Destroy: The Chicago Incident, December 4, 1969. Commission of Inquiry into the Black Panthers and Law Enforcement. Simon & Schuster, $6.95.
Report of the independent citizens' commission headed by former U.S. Attorney General Ramsey Clark and Roy Wilkins, executive director of the NAACP, on the circumstances of the deaths, police investigation and testimony, and evidence in the raid on the Black Panthers in Chicago in 1969.

Sex, Schools and Society. Stewart Fraser, ed. Aurora, $12.

Something for Everybody Is Not Enough: An Educator's Search for His Education. William M. Birenbaum. Random House, $7.95.

Truth and Untruth: Political Deceit in America. Paul N. McCloskey, Jr. Simon & Schuster, $6.95, $2.95.
A third-term congressman from California, challenging Richard Nixon for the Republican presidential nomination, believes that a restoration of faith in our system of government is dependent on challenging what he feels is the basic immorality of the Nixon Administration in such areas as Indochina policy, handling of news, justice and civil rights.

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Discussion of American-British relations during and since the Second World War and a consideration of the future.

The United States vs. William Laite. William Laite, Jr., fwd. Louis Wolfson. Acropolis, $6.95, $5.95.
The author's experiences as a Georgia State representative who was convicted of perjury and sent to jail, serving five months before President Nixon overturned the Davis-Bacon Act under which Laite was convicted.

When War Comes. Martin Caidin. Morrow, $4.95.

The White Use of Blacks in America. Dan Lacy. Atheneum, $7.95.

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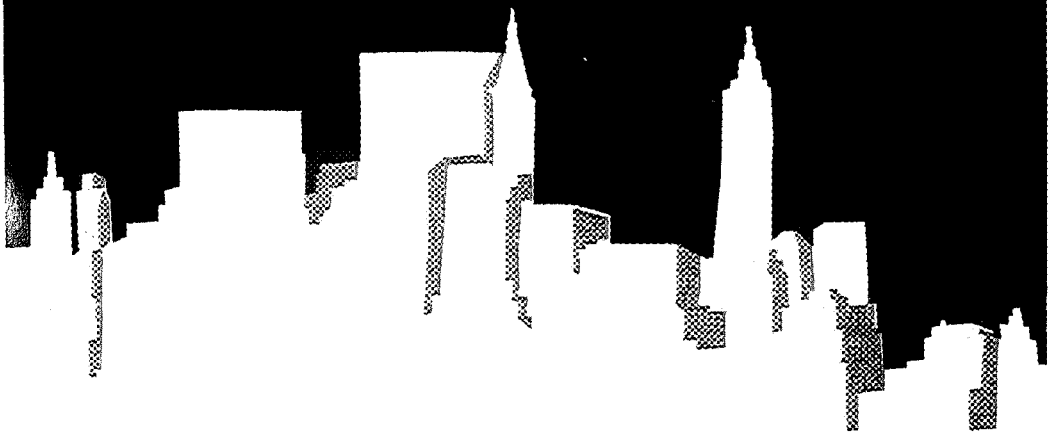

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